Supreme Court of the United States

OCTOBER TERM, 1965

No. 876

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

ACME INDUSTRIAL CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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In the

United States Court of Appeals

For the Seventh Circuit

No. 15045

ACME INDUSTRIAL COMPANY, *Petitioner,* **vs.** **NATIONAL LABOR RELATIONS BOARD,** *Respondent.*	On Petition to Review and Set Aside an Order of the National Labor Relations Board.

JOINT APPENDIX.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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APPENDIX.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES.

In the matter of: Acme Industrial Co., Case No. 13-CA-6396.

5/ 5/64 Charge filed.

6/30/64 Complaint and Notice of hearing, dated.

7/ 6/64 Amendment to complaint, dated.

7/ 9/64 *Respondent's answer and motion to dismiss, dated.

7/21/64 Order denying motion, dated.

8/24/64 Hearing opened.

8/24/64 Hearing closed.

10/ 7 64 Trial Examiner's decision dated.

11/19/64 General Counsel's exceptions to Trial Examiner's decision dated.

12/ 1/64 *Respondent's cross-exceptions to Trial Examiner's decision dated.

2/ 1/65 Decision and order of the National Labor Relations Board issued.

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* Petitioner herein was Respondent in proceedings before the National Labor Relations Board.

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER.

* * * * *

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above Employer refuses to furnish information which the undersigned Union has requested and which is material and necessary for the proper servicing and administration of the current contract between the Employer and the Union.

By these and other acts the Employer is failing and refusing to bargain within the meaning of Section 8(a)(1) and (5) of the Act.

* * * * *

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Thirteenth Region.

Acme Industrial Company, and Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO.	Case No. 13-CA-6396.

COMPLAINT AND NOTICE OF HEARING.

It having been charged by Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, herein called the Union, that Acme Industrial Company, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U. S. C. Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Thirteenth Region, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

I.

The original charge herein was filed on May 7, 1964, and a copy thereof was served on Respondent on or about May 11, 1964, by registered mail.

II.

(a) Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of the laws of the State of Illinois.

(b) At all times material herein, Respondent has maintained its principal office and place of business at 200 North Laflin Street, Chicago, State of Illinois, and is, and has been at all times material herein, engaged in the manufacture of tools and metal products.

(c) Respondent, in the course and conduct of its business operations during the calendar year 1963, shipped goods valued in excess of $50,000 directly to points outside the State of Illinois.

III.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

IV.

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

V.

The unit appropriate for purposes of collective bargaining between the Union and Respondent within the meaning of Section 9(b) of the Act is the unit as set forth in page 1 of the collective bargaining contract executed between the Union and the Respondent on April 23, 1963.

VI.

The Union is, and at all times since April 23, 1963, has been, the representative for the purpose of collective bargaining of the employees in the unit described above in paragraph V and by virtue of Section 9(a) of the Act has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

VII.

On or about April 1, 1964, and at all times since, the Union has requested the Respondent to furnish to the Union data relating to the removal of equipment and machines from the Respondent's plant, and copies of all grievances filed together with a list of all employees on layoff status in the appropriate unit as described in paragraph V above.

VIII.

Commencing on or about April 1, 1964, and at all times thereafter, the Respondent did refuse, and continues to refuse to bargain collectively with the Union as the exclusive collective bargaining representative of all employees in the unit described above in paragraph V, in that on or about April 1, 1964, and at all times since, Respondent has refused, and continues to refuse, to furnish to the Union data relating to the removal of equipment and machines from Respondent's plant, such information being necessary to the processing of pending grievances and the administration of the existing collective bargaining agreement.

IX.

By the acts described in paragraph VIII above, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

X.

By the acts described above in paragraph VIII, and by each of said acts, Respondent has failed and refused, and continues to fail and refuse to bargain collectively with the representative of its employees, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

XI.

The acts of Respondent described in paragraph VIII above, occurring in connection with the operations of Respondent described in paragraph II above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, and constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Please Take Notice that on the 24th day of August, 1964, at 10:00 A.M., C. D. S. T., in Room 826, United States Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the

above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall file with the undersigned Regional Director (in Room 881, United States Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois, 60604), acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be true and may be so found by the Board.

Dated at Chicago, Illinois, this 30th day of June, 1964.

/s/ Ross M. Madden,
Ross M. Madden, Regional Director,
National Labor Relations Board,
Thirteenth Region,
176 West Adams Street,
Chicago, Illinois 60603.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.
• • (Caption—13-CA-6396) • •

AMENDMENT TO COMPLAINT.

A Complaint and Notice of Hearing having been issued in the above-entitled case on June 30, 1964, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the Regional Director for the Thirteenth Region, designated by the Board's Rules and Regulations, Series 8, as amended, hereby issues this Amendment to Complaint by herewith placing a period after the words "Respondent's plant" in paragraph VII and deleting from paragraph VII the words "and copies of all grievances filed together with a list of all employees on layoff status in the appropriate unit as described in paragraph V above," so that paragraph VII, as amended, will read as follows:

VII.

On or about April 1, 1964, and at all times since, the Union has requested the Respondent to furnish to the Union data relative to the removal of equipment and machines from the Respondent's plant.

Dated at Chicago, Illinois, this 6th day of July, 1964.

/s/ William J. Cavers,
William J. Cavers,
Acting Regional Director,
National Labor Relations Board,
Thirteenth Region,
Room 881, United States Courthouse and Federal Office Building,
216 S. Dearborn Street,
Chicago, Illinois 60604.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—13-CA-6396) * *

ANSWER.

Now Comes Acme Industrial Company, by Seyfarth, Shaw, Fairweather & Geraldson, its attorneys, pursuant to Section 102.20 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, for its answer to the Complaint, states and alleges:

1. Respondent admits the allegations of paragraph I of the Complaint.
2. Respondent admits the allegations of paragraph II of the Complaint.
3. Respondent admits the allegations of paragraph III of the Complaint.
4. Respondent neither admits nor denies the allegations of paragraph IV of the Complaint, said allegations not being within its knowledge.
5. Respondent neither admits nor denies the allegations of paragraph V of the Complaint, but demands strict proof thereof.
6. Respondent neither admits nor denies the allegations of paragraph VI of the Complaint, but demands strict proof thereof.
7. Respondent denies the allegations of paragraph VII, but states that on April 8, 1964, the Respondent did receive a letter from the Union asking for information concerning the removal of equipment from the Respondent's plant to aid it in the servicing of the parties' labor agreement.
8. Respondent denies each and every allegation of paragraph VIII of the Complaint, but states that on April 16, 1964, it sent a letter to the Union

stating that the requested information was unnecessary to the servicing of the parties' labor agreement.

9. Respondent denies each and every allegation of paragraph IX of the Complaint.
10. Respondent denies each and every allegation of paragraph X of the Complaint.
11. Respondent denies each and every allegation of paragraph XI of the Complaint.

Wherefore, Respondent prays that the Complaint be dismissed in its entirety.

Dated at Chicago, Illinois this 9th day of July, 1964.

Acme Industrial Company,
By: Charles J. Griffin,
Its Attorney.

Seyfarth, Shaw, Fairweather
& Geraldson,
111 West Jackson Boulevard,
Chicago, Illinois 60604,
431-9000.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.
• • (Caption—13-CA-6396) • •

MOTION OF ACME INDUSTRIAL COMPANY TO DISMISS COMPLAINT.

Pursuant to Section 102.24 of the Board's Rules and Regulations, Acme Industrial Company, Respondent in the above-entitled matter, by its attorneys, Seyfarth, Shaw, Fairweather & Geraldson, moves that the complaint and notice of hearing herein against Acme Industrial Company be dismissed in its entirety on the ground that said complaint does not allege conduct of the Respondent which is in violation of the National Labor Relations Act.

In support of this motion, Respondent submits the attached affidavit of T. J. Bellush, Industrial Relations Manager of Acme Industrial Company and Exhibits 1, 2 and 3 attached thereto.

Respectfully submitted,

Acme Industrial Company,
By: Charles J. Griffin,
Its Attorney.

Seyfarth, Shaw, Fairweather
& Geraldson,
111 West Jackson Boulevard,
Chicago, Illinois 60604,
July 9, 1964.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—13-CA-6396) * *

AFFIDAVIT OF T. J. BELLUSH MANAGER OF INDUSTRIAL RELATIONS, ACME INDUSTRIAL COMPANY.

T. J. Bellush, being first duly sworn on oath, states as follows:

1. I am and have been at all times here material, employed as Industrial Relations Manager for Acme Industrial Company, 200-222 North Laflin Street, Chicago, Illinois.

2. This affidavit is given by me in support of the motion of Acme Industrial Company to dismiss the complaint against it in National Labor Relations Board Case No. 13-CA-6396.

3. Acme Industrial Company and the International Union, United Automobile, Aerospace and Agriculture Implement Workers of America, AFL-CIO, and its Amalgamated Local Union No. 310, are parties to a collective bargaining agreement entered into on April 23, 1963, which is due to expire according to its terms on April 22, 1966. Attached hereto a Exhibit 1 is a copy of said collective bargaining agreement.

4. On April 8, 1964, the Company received a letter from the Union, copy of which is attached hereto as Exhibit 2. This letter constitutes the Union's request for information which is the subject of the unfair labor practice charge here involved.

5. On April 16, 1964, the Company replied to the Union, a copy of which reply is attached hereto as Exhibit 3.

6. Since the execution of the current labor agreement, there have been no layoffs or reductions in classification of any employee as a result of the removal of any equipment from the Company's plant.

/s/ T. J. Bellush,
T. J. Bellush,
Manager of Industrial Relations, Acme Industrial Company.

Subscribed and sworn to before me this ..... day of July, 1964.

_____
Notary Public.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—13-CA-6396) * *

MEMORANDUM OF ACME INDUSTRIAL COMPANY IN SUPPORT OF MOTION TO DISMISS COMPLAINT.

Acme Industrial Company, Respondent in the above-noted case, files this Memorandum in Support of its Motion to Dismiss the Complaint in this case.

In essence and in total, the complaint alleges that the Respondent did refuse and continue to refuse to bargain collectively with the Union by reason of its refusal to furnish the Union information relating to the removal of equipment from the Respondent's plant.

The Union's request (see Respondent's Answer, paragraph 7) noted that the information requested was "for the servicing and administration of the current contract."

The Union's unfair labor practice charge noted that the information requested was "material and necessary for

the proper servicing and administration of the current contract. . . ."

The Complaint herein alleges in paragraph VIII that "such information . . . [is] necessary to the processing of pending grievances and the administration of the existing collective bargaining agreement."

Thus, as in *Avco Mfg. Corp.*, 111 NLRB 729:

> "We are not confronted in the present case with a question involving the broad obligation of a company to furnish wage data during collective-bargaining negotiations with a union. . . ."

The issue here is whether Respondent refused information to the Union which information was necessary to its servicing and administration of the labor agreement.

As in the case of *Betty Brooks Co.*, 99 NLRB 1237, wherein it was found that the names of manufacturers to whom work was subcontracted would not have assisted in the negotiation of an agreement (and, therefore, that the refusal to submit such names did not constitute an unfair labor practice (p. 1246)), so here the information requested would in no way be necessary to the Union in its servicing of the labor agreement under the circumstances here involved. See also *Pool Mfg. Co.*, 70 NLRB 540, 550.

Section 10 of Article VI of the agreement clearly reveals that the Company's right to remove equipment is recognized and unlimited. Where a labor agreement recognized the Employer's unilateral right to subcontract, the refusal to give the Union information as to the amount of work being subcontracted was held by the General Counsel to be not violative of the Act. (Case No. SR-1437; 1961 CCH NLRB, 10,181.)

If the exercise of the Respondent's right to remove equipment resulted in the layoff or reduction of an employee, *then* the information requested might be of aid to

the Union in administering the affected employee's contractual rights, but no such result has been alleged, nor has such a result occurred.

Section 3 of Article I of the labor agreement relates to subcontracting. Not one of the questions raised by the Union would have application to the administration of that contractual provision. If subcontracting is being done, and if such subcontracting is in violation of the noted section, the fact that such subcontracting is being done with equipment previously owned by the Respondent is completely, totally, and obviously immaterial.

We are aware that unduly stringent limitations are not placed upon a Union's request for data, but where such information would not assist the Union in its servicing of the Agreement ". . . but would have resulted only in the Union's use of economic force against such third parties." (*Betty Brooks Co., supra*), then the refusal to give such data is not and should not be an unfair labor practice.

The use of the Board's facilities should not be allowed for the purpose of harassing an employer. (General Counsel Admin. Dec. Case No. 62.)

This Complaint should be dismissed in its entirety.

Respectfully submitted,

Acme Industrial Company,
By: Charles J. Griffin,
Its Attorney.

Seyfarth, Shaw, Fairweather
& Geraldson,
111 West Jackson Boulevard,
Chicago, Illinois 60604,
July 9, 1964.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—13-CA-6396) * *

ORDER DENYING MOTION TO DISMISS COMPLAINT.

Respondent has filed its motion to dismiss the complaint herein, supported by an affidavit and by certain exhibits, and the General Counsel has filed an opposition thereto, and said pleadings have been referred to the undersigned Trial Examiner for a ruling.

Upon consideration thereof, it appears from said pleadings that issues of fact are being raised which can properly be determined only in the light of evidence to be adduced at a hearing.

It is, therefore, Ordered that Respondent's motion be, and the same is hereby, denied.

George A. Downing,
Trial Examiner.

Dated: July 21, 1964.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—13-CA-6396) * *

Theodore A. Lazar, Esq., for the General Counsel.

Seyfarth, Shaw, Fairweather & Geraldson, by E. Allan Kovar, and Charles J. Griffin, Esqs. of Chicago, Ill., for the Respondent.

Katz & Friedman, by Irving M. Friedman, Esq., of Chicago, Ill., for the Charging Party.

Before:

John F. Funke, Trial Examiner.

TRIAL EXAMINER'S DECISION.

Statement of the Case.

Upon a charge filed on May 7, 1964, by Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Workers of America, herein Local 310 or the UAW, against Acme Industrial Company, herein Acme or the Respondent, the General Counsel issued a complaint alleging Respondent violated Section 8(a) (5) by failing to provide Local 310 with information respecting the removal of certain machinery from its Chicago plant.

The answer of the Respondent set forth the contract as a defense and denied the commission of any unfair labor practices.

This proceeding, with all parties represented was heard before me at Chicago, Illinois, on August 24, 1964. At the conclusion of the hearings the parties were given leave to submit briefs and briefs were received from the parties on September 28.

Upon my observations of the witnesses and upon the entire record herein, I make the following:

Findings and Conclusions.

I. The Business of Respondent.

Respondent is an Illinois corporation maintaining an office and principal place of business at 200 North Laflin Street, Chicago, Illinois. It is engaged in the manufacture of tools and metal products and in the course of calendar year 1963 shipped products valued in excess of $50,000 to places outside the State of Illinois.

Respondent is an employer engaged in commerce within the meaning of the Act.

II. Labor Organization Involved.

Local 310 is a labor organization within the meaning of the Act.

III. The Unfair Labor Practices.

A. The Facts.

The complaint is specific, alleging, paragraph VIII:

> Commencing on or about April 1, 1964, and at all times thereafter, the Respondent did refuse, and continues to refuse to bargain collectively with the Union as the exclusive collective bargaining representative of all employees in the unit described above in paragraph V, in that on or about April 1, 1964, and at all times since, Respondent has refused, and continues to refuse, to furnish to the Union data relating to the removal of equipment and machines from Respondent's plant, such information being necessary to the processing of pending grievances and the administration of the existing collective bargaining agreement.

The contract between the parties dated April 23, 1964,[1] contains the following clauses which are alleged by one or the other of the parties thereto to be relevant and controlling:

Article I.

Section 3. It is the Company's general policy not to subcontract work which is normally performed by employees in the bargaining unit where this will cause the layoff of employees or prevent the recall of employees who would normally perform this work for the Company. The Company will continue to purchase components and sub-assemblies and to have other outside work done, including the making of tools and dies, where it is not economic to perform this work in the plant, or where production schedules, equipment, employee skills or other factors make it impractical to perform the work in the plant. Violation of the above will be subject to the grievance procedure.

It is understood that this Section shall have no application to subcontracts in existence at the time of the execution of this Agreement.

Article IV.

Section 1. A grievance is a difference of opinion with respect to the meaning and application of the terms of this Agreement.[2]

Article VI.

Section 10. In the event the equipment of the plant or of any department, entirely or partially, is hereafter moved to another location of the Company, employees working in the plant or in such department

1. General Counsel's Exhibit No. 3.

2. The grievance procedure provides for three steps with final and binding arbitration if agreement cannot be reached.

who are subject to reduction in classification or layoff as a result thereof may transfer to the new location with full rights and seniority, unless there is then in existence at the new location a collective bargaining agreement covering production and maintenance employees at such location.

During a period beginning January 3, 1964, and running through March 3, 1964, Local 310 submitted 11 grievances (General Counsel's Exhibit Nos. 4-A through 4-K) related to the removal of machinery from Respondent's Chicago plant and to the subcontracting of work at that plant.[3]

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3. The Trial Examiner ruled, in view of the specificity of paragraph VIII of the complaint, that he would limit his decision to the failure of the Respondent to provide information respecting the removal of machinery and would not consider the failure to provide information respecting subcontracting. The following colloquy took place when the General Counsel sought to expand the issue:

Mr. Lazar: I have no further questions of this witness.

However, I'd like to reaffirm at this time my basic objection to the Trial Examiner's ruling and take exception to the ruling. I realize I have an automatic exception. However, I want it understood that the reason for my exception to the ruling with respect to testimony on subcontracting goes basically to the issue as to whether or not this information would have elicited, if granted, would have elicited such information. In other words, if the company had told the union why it was removing the machinery and where it was removing it to, then it would necessarily follow that if the company was subcontracting, the union would have had certain rights under the contract and also under the law if not expressly by virtue of the contract to demand bargaining over that subject.

Not having knowledge of that fact, the union was in no position to make any demand or to process its grievances.

Trial Examiner: I am making the same statement. Your complaint very specifically refers to information related to the removal of equipment and machines.

These grievances were pending at the time of the hearing. On April 3 Local 310 wrote Respondent (General Counsel's Exhibit No. 5) requesting information with respect to the moving of machinery from the Chicago plant. This letter read:

Dear Mr. Bellush:

The Union requests that the Company furnish the following information at the earliest possible date:

1. The approximate dates when each piece of equipment was moved out of the plant.

Now, you have had an investigation in this case. Had you found a violation of the subcontracting clause in the investigation of this charge, you could have had —you could have asked the union to amend the charge and brought all of that in.

Mr. Lazar: I might ask the witness—Mr. Bellush, were you ever permitted to talk to me during the course of investigation in this case?

Mr. Kovar: Objection.

Trial Examiner: Sustained.

Q. (By Mr. Lazar.) Did you at any time talk to any Board agent?

Mr. Kovar: I object to the question again.

Trial Examiner: Sustained.

Mr. Lazar: I should like to point out, Mr. Trial Examiner, that it is very clear that at no time during the course of this investigation was the Board permitted to receive any information from the company other than that which it voluntarily submitted.

Mr. Kovar: I will object to that comment.

Trial Examiner: Well, there is the power of subpoena if you thought they were withholding. I certainly agree with Respondent that that is an objectionable statement. Of course you are only going to get the information which Respondent volunteers to you if you don't issue a subpoena. Why should he give it to you minus a subpoena? It is an amazing thing to me that the respondents cooperate with the Board as much as they do, and this goes to respondent unions and respondent employers.

2. The place to which each piece of equipment was moved and whether such place is a facility which is operated or controlled by the Company.
3. The number of machines or equipment that was moved out of the plant.
4. What was the reason or purpose of moving the equipment out of the plant.
5. Is this equipment used for production elsewhere.

The information we are asking for is essential to the Union for the servicing and administration of the current contract.

Sincerely,

William Antalek,
President, Local 310 UAW.

Respondent replied by letter dated April 16 (General Counsel's Exhibit No. 6) reading:

Dear Mr. Antalek:

We were unaware that our relationship with your union had reached the stage when correspondence such as your letter of April 3, 1964 has become necessary. However, while we are of the opinion that it is not the scope and complexities of our relationship that dictates your use of this medium but, rather, that you are now attempting to build an unfair labor practice charge case, we shall, nevertheless, hereby respond.

We presume that your questions relate to Article VI, Section 10 of our labor agreement, although you do not specify the relevance and/or utility of the questions. We note that this section establishes a right of transfer, with certain limitations, to employees ". . . who are subject to reduction in classification or layoff

as a result of . . ." the movement of any equipment to another location of the Company. We also note that under Section 4 of Article IV of our labor agreement, grievances relating to layoffs must be filed within five (5) working days thereafter, and grievances relating to transfers must be filed within three (3) working days thereof.

We are aware of no layoffs nor of any reductions in any classification within five (5) working days prior to your letter, and we, therefore, conclude that there is no proper basis upon which your request for information may lie. You have available all the information you need to determine whether or not any employees' rights are being violated. Furthermore, the broad scope of your questions is indicative of a fishing and harassment expedition rather than a true desire for necessary information.

Please be assured that we shall continue to cooperate with your union in providing whatever proper information you request for your aid in servicing and administering our labor agreement.

This request and refusal was the only issue considered by the Trial Examiner.

B. Conclusions.

I regard the issue presented as administrative rather than juridical and, as was indicated at the hearing, it is an issue which should have properly been submitted to the Board in the first instance by way of stipulation. No question of either fact or law is in dispute. The question is solely whether the Board should, when a contract providing for binding arbitration has been executed by the parties and the dispute relates to a matter covered by the contract, intervene to police and administer the arbitration provi-

sions under the guise of preventing an unfair labor practice. I am aware that the Board and the courts, including the U. S. Supreme Court, have held that an employer is obligated to provide information relevant and necessary to enable a labor organization to bargain intelligently and that it constitutes an unfair labor practice under Section 8(a)(5) to refuse such information. My concern here is with the forum which should take cognizance of this dispute. The parties have clearly stated that it should be submitted to arbitration and the Charging Party has, in effect, attempted to use the Board as a means to discovery and inspection in furtherance of its arbitration proceeding.[4] This is not, at least as I see it, a proper function of an agency already overburdened by its caseload. Overburdened, one might add, to a point where it may fail to serve as a functional apparatus for the prevention of unfair labor practices. If the Board, as it indicated in its recent *Cloverleaf* decision[5], intends to leave the parties to arbitration where the arbitration settlement would also put at rest the unfair labor practice controversy in a manner sufficient to effectuate the policies of the Act then this appears to be such a case. This is a matter of policy for the Board and not an examiner to decide.[6] The recommendation of this examiner is in favor of self-restraint. I would not hold that the Respondent has committed an unfair labor practice by withholding information where the dispute has

4. It would appear anomalous for the Board, which does not provide for discovery and inspection in its own proceedings, to serve as an instrument for such procedure in arbitration proceedings.

5. *Cloverleaf Division of Adams Dairy Co.*, 147 NLRB No. 133.

6. For a statement of national policy respecting the priority which should be accorded the grievance machinery provided for in a contract see *United Steelworkers* v. *Warrior & Gulf Co.*, 363 U. S. 574, 581.

been contemplated by the parties in making their contract and binding arbitration has been established to resolve that dispute. We are approaching a point where an employer may well wonder if he has anything to gain by engaging in collective bargaining if any disaffection with the operation of the contract on the part of contracting union may be taken to review by the Board under Section 8(a)(5).

Upon the basis of the foregoing findings and upon the entire record in this case, I make the following:

Conclusions of Law.

1. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

Recommendation.

It is recommended that the complaint be dismissed in its entirety.

Dated at Washington, D.C., Oct. 7, 1964.

John F. Funke,

Trial Examiner.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—13-CA-6396) * *

DECISION AND ORDER.

On October 7, 1964, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding finding that the Respondent had not engaged in unfair labor practices as alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the Trial Examiner's Decision attached hereto. Thereafter, the General Counsel, the Charging Party and the Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and finds merit in the exceptions of the General Counsel and the Charging Party. Accordingly, the Board adopts the findings of the Trial Examiner only to the extent consistent herewith.

On April 23, 1963,[1] the Union and Respondent settled a strike which had lasted 8 months. Since the settlement, there have been between 30 and 75 employees on layoff status. On the day of the settlement, the Union and Respondent executed a collective-bargaining agreement con-

1. The Trial Examiner inadvertently found that the agreement was dated April 23, 1964, instead of April 23, 1963.

taining the following pertinent provisions which are alleged by one or the other of the parties thereto to be relevant and controlling:

Article I.

Section 3. It is the Company's general policy not to subcontract work which is normally performed by employees in the bargaining unit where this will cause the layoff of employees or prevent the recall of employees who would normally perform this work for the Company. . . .

Article VI.

Section 10. In the event the equipment of the plant or of any department, entirely or partially, is hereafter moved to another location of the Company, employees working in the plant or in such department who are subject to reduction in classification or layoff as a result thereof may transfer to the new location with full rights and seniority, unless there is then in existence at the new location a collective bargaining agreement covering production and maintenance employees at such location.

On or about January 8, 1964, the Union, upon discovering that machinery was being removed from Respondent's Chicago plant, began to seek information concerning this through its stewards. The steward would in each case ask why the machinery was being removed and where it was being moved. In each case the Respondent's foreman would state that he felt there had been no violation of the contract and that the Respondent did not feel compelled to give such information. The Union submitted 11 grievances related to the removal of machinery and to the subcontracting of work at the plant.

On April 3, 1964, William Antalek, president of the

Union, wrote a letter to Respondent requesting information concerning the approximate date when each piece of equipment was moved out of the plant; place to which the equipment was moved and whether such place is a facility which is operated or controlled by the Company; the number of machines or equipment moved out of the plant; the reason or purpose for moving the equipment; whether the equipment is used for production elsewhere. On April 16, 1964, the Respondent wrote a letter in answer and therein refused to give the requested information.

In dismissing the complaint, the Trial Examiner found that the parties clearly provided in their contract that contractual disputes should be sent to arbitration, and for that reason would leave them to the arbitration process. In so finding, the Trial Examiner viewed the scope of the complaint as being limited to the failure of Respondent to provide information respecting the removal of machinery and not the failure to provide information respecting subcontracting.

The General Counsel and Charging Party contend that the requested information is necessary to the processing of pending grievances and the administration of the existing collective-bargaining agreement.

We find, contrary to the Trial Examiner, that the complaint is sufficiently broad to include the subcontracting provision of the contract. The language of the complaint does not specifically mention nor limit the scope of the complaint to any provision of the contract. The information requested by the Union can be related to either Article I, Section 3, or Article VI, Section 10 of the agreement.

As to the information requested by the Union, Respondent contends a statutory duty to furnish information does not exist where the information sought is irrelevant to the Union's function of representing employees concerning their wages, hours, or conditions of employment. Here

the Respondent attempts to show that no employees were affected by the removal of machinery, thus making the requested information immaterial.

It is clear that Section 8(a)(5) of the Act imposes an obligation upon an employer to furnish upon request all information relevant to the bargaining representative's intelligent performance of its function.[2] Applying this principle to the instant case, it is clear, and we find contrary to the Trial Examiner, that the information sought by the Union was necessary in order to enable the Union to evaluate intelligently the grievances filed and to determine whether such grievances were meritorious, and whether to press for arbitration. The denial of such information deprives the Union of an opportunity to know whether jobs and machinery have been moved out of the plant under circumstances entitling employees, especially those in lay-off status, to follow the jobs or entitling the Union to grieve over improper subcontracting. We note that the contract does not contain a clause dealing specifically with the furnishing of information necessary and relevant to the processing of grievances or any other clause by which the union waives its statutory right to such information. The mere existence of a grievance machinery terminating in arbitration is not to be construed as a waiver of the Union's statutory right to such information.[3] Respondent was remiss in performing its statutory duty in refusing to furnish this information. We find that, by such conduct, the Respondent since on or about January 13, 1964, has failed to bargain with the Union, in violation of Section 8(a)(5) and (1) of the Act.

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2. *Timken Roller Bearing Company* v. *N. L. R. B.*, 138 NLRB 15, 325 F. 2d 746.

3. *The Fafnir Bearing Company*, 146 NLRB No. 179, page 5.

The Remedy.

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, we shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the purposes of the Act.

It has been found that by refusing to furnish information concerning the removal of machinery from the plant, Respondent refused to bargain collectively with Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and thereby interfered with, restrained, and coerced its employees. We shall order Respondent to furnish full information concerning the removal of machinery and equipment from its plant.

Order.

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Acme Industrial Company, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, as the exclusive bargaining representative of its employees by refusing to furnish to it or its agents information concerning the removal of equipment and machinery from its plant.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to

join or assist International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and its Local No. 310, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Furnish upon request to the Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, or its agents, information concerning the removal of equipment and machinery from its plant.

(b) Post at its plant in Chicago, Illinois, copies of the notice attached hereto marked "Appendix."[4] Copies of the said notice, to be furnished by the Regional Director for the Thirteenth Region, after being signed by a representative of the Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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4. In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C. Feb. 1, 1965.

John H. Fanning,
Member,
Gerald A. Brown,
Member,
Howard Jenkins, Jr.,
Member,
(Seal) National Labor Relations Board,

APPENDIX.

Notice To All Employees
Pursuant To
A Decision And Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not refuse to bargain collectively with Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, as the exclusive bargaining representative of its employees by refusing to furnish to it or its agents information concerning the removal of equipment and machinery from its plant.

We Will Not in any like or related manner interfere with, restrain, or coerce its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United

Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and its Local No. 310, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

We Will upon request furnish to Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, or its agents, information concerning the removal of equipment and machinery from its plant.

Acme Industrial Company,

(Employer)

Dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 219 S. Dearborn St., Chicago, Illinois, 60604 (Telephone Number 828-7572), if they have any question concerning this notice or compliance with its provisions.

IN THE UNITED STATES COURT OF APPEALS,

For the Seventh Circuit.

Acme Industrial Company, *Petitioner,* *vs.* National Labor Relations Board, *Respondent.*	Case No. 15,045.

PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable Judges of the United States Court of Appeals for the Seventh Circuit:

Acme Industrial Company, an Illinois corporation hereinafter referred to as the "Petitioner," believing itself to be aggrieved by a certain order issued on February 1, 1965, by the National Labor Relations Board, hereinafter referred to as the "Board," in a proceeding against Petitioner appearing upon the docket of the Board as Case No. 13-CA-6396, in the matter of Acme Industrial Company and Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO, pursuant to Section 10(f) of the National Labor Relations Act as amended, 61 Stat. 136, 29 U. S. C., Section 151 *et seq.* (hereinafter referred to as the "Act"), respectfully petitions this Honorable Court to review and set aside said order and, in support of its petition, Petitioner represents that:

1. On February 1, 1965, the Board issued its Decision and Order in said proceedings wherein it found and concluded that Petitioner had committed, and is committing, an unfair labor practice by refusing to bargain within the

meaning of Sections 8(a)(5) and (1) of the Act and ordered Petitioner to cease and desist therefrom as well as to take certain affirmative actions; all as set forth in the Board's Decision and Order reported as 150 NLRB No. 144. Petitioner seeks review and reversal of the Board's Decision and Order insofar as it finds and concludes that Petitioner has committed unfair labor practices.

2. This Court has jurisdiction over the parties and subject matter of this cause; Petitioner maintains its general office and production facilities in Chicago, Illinois, within the Seventh Judicial Circuit of the United States. The alleged unfair labor practices complained of in said proceeding before the Board were alleged to have been engaged in within this Judicial Circuit.

3. Insofar as it finds that Petitioner has committed unfair labor practices, the Decision and Order in said proceedings are not supported by substantial evidence or applicable law, are arbitrary and capricious, and an abuse of the Board's discretion under the Act.

Wherefore, Petitioner prays that the Court review and set aside the Decision and Order of the Board in Case No. 13-CA-6396, and grant such other relief as the rights and equities of the cause may require.

Respectfully submitted,

Acme Industrial Company,
By /s/ E. Allan Kovar,
/s/ Charles J. Griffin, Jr.,
Its Attorneys.

Seyfarth, Shaw, Fairweather
& Geraldson,
111 West Jackson Boulevard,
Chicago, Illinois, 60604
Phone: 431-9000.

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—13-CA-6396) * *

Hearing Room "B",
219 South Dearborn Street,
Chicago, Illinois,
Monday, August 24, 1964.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

Before:

John F. Funke, Trial Examiner.

Appearances:

Theodore A. Lazar, Esq., Counsel for General Counsel, National Labor Relations Board, 219 South Dearborn Street, Chicago, Illinois.

Seyfarth, Shaw, Fairweather & Geraldson, by: E. Allan Kovar, Esq. and Charles J. Griffin, Esq., 111 West Jackson Blvd., Chicago, Illinois, appearing on behalf of Acme Industrial Company, the Respondent.

Katz & Friedman, by: Irving M. Friedman, Esq., 7 South Dearborn Street, Chicago, Illinois, appearing on behalf of Local 310, UAW, AFL-CIO, Charging Party.

* * * * *

3 PROCEEDINGS.

* * * * *

6 Mr. Lazar: Mr. Trial Examiner, it has been stipulated by and between the General Counsel and the Counsel for the Respondent and I believe that Counsel for

the Charging Party will join in the stipulation that we
7 make a part of the record the Respondent's motion to dismiss the complaint which should be received as General Counsel's Exhibit No. 2.

Trial Examiner: Is it my understanding that there is excluded from the Exhibit 2 any handwriting notations made thereon?

Mr. Kovar: That is correct, sir.

Mr. Lazar: Other than the printed material.

Trial Examiner: Oh, yes.

Mr. Lazar: Right.

Trial Examiner: All right.

With that qualification, the exhibit is received in evidence.

(Whereupon, GENERAL COUNSEL'S EXHIBIT NO. 2 was received into evidence.)

• • • • •

Trial Examiner: I have one or two questions that I would like to address to the General Counsel. Has this proceeding ever gone to arbitration?

Mr. Lazar: No, not that I know of.

Mr. Kovar: No, sir.

8 Trial Examiner: Do you know why not?

Mr. Lazar: I have an idea why not.

Trial Examiner: Well, if you don't care to disclose your reasons I won't press you.

Are there any issues of fact in this case?

Mr. Lazar: Yes, there are.

Trial Examiner: There are issues that should go to the Board? We couldn't go on a stipulated record?

Mr. Lazar: Mr. Friedman has discussed this with me and we might discuss it with Counsel for the Respondent and I doubt that this is a possibility.

Trial Examiner: My review of the case has only been

a casual study of the formal documents. It's understood, however, that there is one very narrow issue in the case?

• • • • •

Mr. Lazar: I would at this time like to make a motion, Mr. Trial Examiner. I think it is a rather simple one.

I believe that in paragraph 7 of the complaint the second line from the bottom the word "data" is used.

Trial Examiner: Just a minute. Where is that, sir?

Mr. Lazar: Paragraph 7, page 2, the second line from the bottom.

Trial Examiner: Oh, yes.

Mr. Lazar: The word "data" is used.

Trial Examiner: Yes.

Mr. Lazar: If there is no objection, I should like to substitute the word "information" and wherever the word "data" appears in the complaint I should like to make the same motion.

Trial Examiner: Do you consider that a material amendment?

Mr. Lazar: No, but—

Trial Examiner: I am addressing my remarks to counsel for the Respondent.

Mr. Kovar: Inasmuch as I don't understand the difference, I have no objections.

Trial Examiner: All right. I think it is purely semantics. I think the word "information" is the word used in Board decisions in this subject and I think he would be keeping within the Board decisions. I should not speak for the General Counsel, however.

The motion is granted.

• • • • •

10 THOMAS J. BELLUSH, called by and on behalf of Counsel for General Counsel, National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Be seated and give your name and address to the Reporter, please.

The Witness: Thomas J. Bellush, 222 North Laflin, Chicago 7, Illinois, I can be contacted.

Direct Examination.

Q. (By Mr. Lazar.) Is that your home address, sir?

A. No.

Q. Please state your home address.

A. 17 South Springfield Avenue, Chicago 24, Illinois.

Q. Now, Mr. Bellush, what is your position with the company?

A. Industrial relations manager.

Q. Industrial relations manager?

A. Industrial relations manager.

Q. Did you bring with you a letter to the Acme Industrial Company: "Attention Mr. T. J. Bellush" from Mr. William Antalek, President of Local 310 of the United Auto Workers dated April 3, 1964?

A. Yes, I did.

Q. Did you also bring with you the originals of grievance Nos. 54, 57, 58, 60, 62, 63, 64, 65, 66 and 67?

11 A. Yes.

Q. Filed with your company by the union?

A. Yes, I did.

Q. Do you have those with you?

A. Yes.

Q. Thank you.

(Documents tendered.)

• • • • •

Q. (By Mr. Lazar.) Now, Mr. Bellush, I now show you General Counsel's Exhibit No. 3 for identification and ask you if you recognize that exhibit which purports to be the contract between your company and the union which was executed on April 23, 1963?

A. Yes, this is it.

Q. Does it bear your signature, sir?

A. Yes, it does.

Q. Does it bear the signature of other members, officers of your company?

A. Yes, sir.

Q. Does it also bear the signature of officers of the union?

12 A. Yes, it does.

• • • • •

Q. (By Mr. Lazar.) Now, Mr. Bellush, I will show you just above Article 1 here on page 2 of the bargaining agreement. Would you read that, please.

• • • • •

13 The Witness: I have read it.

Q. (By Mr. Lazar.) Now, is that the bargaining unit that you agreed to that would represent the employees, the bargaining unit that the company would recognize?

A. Yes, it is.

Q. As far as you know the union represents the members, all the members of that particular bargaining unit?

A. Yes.

• • • • •

Q. (By Mr. Lazar.) Now, Mr. Bellush, how many people are there employed in the unit that is described

14 on page 2 of the contract?

Trial Examiner: At the present time?

Q. (By Mr. Lazar.) At the present time.

A. About 115.

• • • • •

Mr. Lazar: I am going to ask that General Counsel's Exhibit No. 3 for identification be received in evidence and I will ask leave to substitute these copies, printed copies.

Trial Examiner: There is no objection, is there, Mr. Kovar?

Mr. Kovar: No objections.

Trial Examiner: They will be received.

(Whereupon, GENERAL COUNSEL'S EXHIBIT NO. 3 was received in evidence.)

Trial Examiner: Is this the only plant of the company, the Chicago plant, or do you have other plants, sir?

A. The Witness: No, we have other plants.

Trial Examiner: That is what I thought.

Trial Examiner: Is this the main plant?

The Witness: Yes.

* * * * *

Q. (By Mr. Lazar.) Now, Mr. Bellush, I am going to show you General Counsel's Exhibit No. 4-A for identification and ask you if you recognize that exhibit which purports to be a grievance or complaint filed by the union.

A. Yes, I do recognize it.

Q. Did you receive that on or about the date that is on the face of this document?

A. Yes.

Q. Which would be January 13, 1964?

A. Yes.

Q. This was given to you by Rudolph Rich, is that correct?

A. Well, sometimes they are handed to me directly. I don't honestly remember. He may have given it to his foreman and the foreman gave it to me.

Q. Is that his signature?

A. Yes.

Q. Now, I will now show you General Counsel's Exhibit No. 4-B for identification and ask you if you recognize that grievance or complaint form which appears to have been filed on January 31, 1964?

A. Yes, I do recognize it.

Q. Now, who was the union steward or the union committeeman who filed that grievance?

A. Victor T. Soholowski.

Q. I will now show you General Counsel's Exhibit No. 4-C for identification, also purporting to be a grievance which was filed by a committeeman, union committeeman on January 31, 1964 and ask you if you recognize that exhibit, sir?

A. Yes, I do.

Q. Who was the union committeeman who filed it?

A. Victor T. Soholowski.

Mr. Kovar: What grievance number are you referring to there?

Mr. Lazar: That would be No. 58.

Mr. Kovar: I think it would help if you refer to the number of the grievance.

Mr. Lazar: Yes.

Let the record show that General Counsel's Exhibit No. 4-A for identification appears to be grievance No. 54; General Counsel's Exhibit No. 4-B for identification appears to be grievance 57.

17 General Counsel's Exhibit No. 4-C for identification appears to be grievance No. 58.

Q. (By Mr. Lazar.) I now show you General Counsel's Exhibit No. 4 for identification purporting to be grievance No. 60, a grievance filed by the union committeeman on February 10, 1964 and ask you if you recognize that?

A. Yes, sir, I do.

Q. What committeeman presented that grievance?

A. Rudolph Rich.

Q. I now show you General Counsel's Exhibit No. 4-E for identification purporting to be grievance No. 61 dated February 10, 1964 and ask you if you recognize that grievance?

A. Yes, I do.

Q. Who filed that grievance for the union?

A. Rudolph Rich.

Q. I now show you General Counsel's Exhibit No. 4-F for identification purporting to be grievance No. 62 dated February 10, 1964 and ask you if you recognize that exhibit, sir?

A. Yes, sir, I do.

Q. Who presented that for the union?

A. Rudolph Rich.

Q. I now show you General Counsel's Exhibit No. 4-G for identification purporting to be grievance No. 63 dated March 2, 1964 and ask you if you recognize that grievance, sir?

A. Yes, sir, I do.

Q. Who was the union committeeman who presented that on behalf of the union?

A. Rudolph Rich.

Q. I now show you General Counsel's Exhibit No. 4-H for identification purporting to be a grievance or complaint No. 64 dated March 3, 1964 and ask you if you recognize that?

A. Yes.

Q. Who was the union steward or committeeman who presented that to the company?

A. Victor T. Soholowski.

Q. I show you General Counsel's Exhibit No. 4-I for identification purporting to be grievance No. 65 dated March 3, 1964 and ask you if you recognize that grievance, sir?

A. Yes, I do.

Q. Who filed that?

A. Victor T. Soholowski.

Q. I will now show you General Counsel's Exhibit No. 4-J for identification purporting to be grievance No. 66 dated March 3, 1964 and ask you if you recognize?

A. Recognize that—yes, sir I do.

Q. Who was the union steward or committeeman who presented that to the company?

A. Victor T. Soholowski.

Q. I now show you General Counsel's Exhibit No. 4-K purporting to be grievance No. 67 dated March 3, 1964 and ask if you recognize that?

A. Yes, sir, I do.

Q. Which union steward filed that one?

A. Victor T. Soholowski.

Q. Now, Mr. Bellish, these grievances which you have just identified, are they still pending?

A. Yes, sir.

Mr. Lazar: I will ask that General Counsel's Exhibit Nos. 4-A through 4-K for identification be received in evidence as General Counsel's Exhibit Nos. 4-A through 4-K.

Trial Examiner: Any objections?

Mr. Kovar: No objections.

Trial Examiner: They will be received.

(Whereupon, GENERAL COUNSEL'S EXHIBIT NOS. 4-A through 4-K were received into evidence.)

* * * * *

Do all of these grievances relate to about the same set of facts?

Mr. Lazar: No.

Trial Examiner: Do they relate to these—to employees who have been laid off?

Mr. Lazar: Mr. Funke, it is the position of the General Counsel that this isn't all that is material here. They relate to the movement of machinery for the most part.

Trial Examiner: All right. I think you have answered my question.

But I do understand that all of these grievances are presently pending in the grievance procedures stage set up under the contract?

• • • • •

21 *Cross-Examination.*

Q. (By Mr. Kovar.) Mr. Bellush, with respect to General Counsel's Exhibit No. 4-A which is grievance No. 54, this grievance has to do with the alleged removal of a Kleerman Machine?

A. Yes.

Q. Employees in what department utilized that
22 machine prior to April of 1963?

A. Tool room employees.

Mr. Lazar: Objection, Mr. Trial Examiner, I don't know what materiality it has at this point.

Trial Examiner: I don't either but it is a preliminary question. I will permit it.

Q. (By Mr. Kovar.) Subsequent to April 23, 1964, the execution date of the current collective bargaining agreement, how many tool room employees did the company have actively employed?

A. Two.

Q. Between April 23, 1963—I may have referred to 1964 in the earlier question—April 23, 1963 is the execution date of the current contract.

Between that date and the date of filing of this grievance, was there any change in the number of tool room employes actively employed by the company?

A. No.

Q. Subsequent to the removal of the Kleerman Machine, was there any reduction in the number of tool room employees actively employed by the company?

A. No.

Q. Were any tool room employees reduced in classification subsequent to the removal of the Kleerman Machine?

A. No.

23 Trial Examiner: What is the number of that grievance, sir?

Mr. Kovar: That is grievance No. 54 which has been identified as General Counsel's Exhibit No. 4-A.

Q. (By Mr. Kovar.) Directing your attention to General Counsel's Exhibit No. 4-B which is grievance No. 57 which deals with the alleged removal of Jeweler's Lathes, on April 23, 1963, how many Jeweler's Lathes were there in the plant?

A. Two.

Q. On the date that the grievance No. 57 was filed, how many Jeweler's Lathes were there in the plant?

A. Two.

Mr. Friedman: I object on the grounds that it is not material to the issue of the hearing, Mr. Trial Examiner. The issue in the case is whether or not the employer was obligated to furnish information to the union in connection with the processing of the grievances. The issue of the case is not the merit of the grievances. We are not asking the Board to decide the merits of the grievance.

Trial Examiner: One of the issues in this case is whether or not the parties should have resorted to the terms of the contract instead of coming to the Board with an unfair labor practice. So, I am going to accept this

24 information on that basis, this testimony. I know the scope that you are giving to the construction of the charge in the complaint. I understand that. But I think the counsel for the Respondent is entitled to put in the facts since he believes that the scope—he believes that the Board should not exercise jurisdiction hereto.

Mr. Friedman: Mr. Trial Examiner, isn't that a ques-

tion that the Examiner should rule on at this point as to whether or not that is a—

Trial Examiner: I am going to permit him to get in the evidence. That is my ruling, because I think there is a very serious question as to should this be before the Board.

• • • • •

To exclude this testimony and confine the taking of testimony as to whether or not the Respondent furnished the information—I think we agreed that the Respondent did not furnish the information?

Mr. Friedman: Yes.

• • • • •

25 Q. How many Jeweler's Lathes were there in the plant on or about April 8, 1964, the date that you received a letter referred to in the complaint?

A. Two.

Q. Prior to April 23, 1963, did the company have any employees classified as Jeweler's Lathe?

A. Yes.

Q. Subsequent to April 23, 1963, did the company have any employees actively classified in the Jeweler's Lathe Classification?

A. No.

Q. At any time?

A. No.

Q. Directing your attention to General Counsel's Exhibit No. 4-C which is grievance No. 58—

• • • • •

27 Mr. Lazar: What I am trying to find out, Mr. Trial Examiner, are you trying to interpret this contract and tell us what exactly that particular paragraph means?

Trial Examiner: No, I am trying to find out whether or not you should have resorted to the grievance proceedings rather than come before the Labor Board.

Mr. Lazar: I don't think there is any question about this.

Trial Examiner: Well, I do.

I will refer you, now—I will read in fact from the Cloverleaf decision where they found, of course, it was an unfair labor practice. It says: "Nor is this a case involving an alleged unfair labor practice, the existence of which
28 turns primarily on an interpretation of specific contractural provisions unquestionably encompassed by the contract arbitration provision. And coming to us in a context that makes it reasonably probable that arbitration settlement, the contract dispute would also put at rest the unfair labor practice controversy in a manner sufficient to effectuate the policies of the Act.

Mr. Lazar: Would you give me the citations.

Trial Examiner: Here, I will let you have it.

Now, that is the majority explaining what— the three members agreed that there was an unfair labor practice because the subcontracting was not covered by the contract. Now, I might construe this contract to mean that if there were no employee affected by a layoff, no employee put in a reduced status, then the contract was not invoked, the contract clause was not invoked and that the information would not be required under the contract, not under Board law. That is why I want to get this information.

* * * * *

29 My question is this: Was the equipment involved in grievance No. 58 used by the company at the Laflin Street address subsequent to April 23, 1963?

A. Not to my knowledge.

Q. Did you investigate this matter when the grievance was filed?

A. Yes, I did.

Q. Pursuant to your investigation, what did you find?

30 A. Is that the big Natco Multiple Drill?

Q. Yes, the grievance refers to a multiple drill press, sir.

A. All right. No, that equipment wasn't used after April 23, 1963.

Q. With regard to General Counsel's Exhibit No. 4-D which is Grievance No. 60, the grievance alleges the removal of thread grinding machines. Subsequent to April 23, 1963, did the company have any employees actively classified as thread grinders?

A. No.

* * * * *

Trial Examiner: Did you have any employees working on these machines—what is the date—

Mr. Kovar: I have been using the date of the execution of this contract, April 23, 1963.

Trial Examiner: Did you have any employees working on the thread grinding machines, do you know?

The Witness: Occasionally they were used by external grinders for slotting and grooving.

Trial Examiner: Do you mean grinders from outside the shop?

The Witness: No.

Trial Examiner: External grinders?

31 The Witness: Yes.

Trial Examiner: Not from outside the shop?

The Witness: That is right.

Q. (By Mr. Kovar.) In response to the question of the Trial Examiner, did you indicate that this equipment was used subsequently to April 23, 1963?

A. Yes.

Q. By employees in what classification?

A. External grinder.

Q. Subsequent to April 23, 1963, has any employees classified as external grinders been laid off?

A. No.

Q. Have any employees in such classification been reduced in that classification since that date?

A. No.

Q. Did you indicate in response to the Trial Examiner's question what kind of work was done on this equipment subsequent to April 23, 1963?

A. Yes, slotting and grooving work.

Q. Was that kind of work still done in the Laflin Street address?

A. Occasionally.

* * * * *

32 Mr. Kovar: I have been interrupted constantly in an attempt to question this witness, this witness who incidentally was subpoenaed by the General Counsel, this witness who was called to the stand by the General Counsel, this witness who is at the present time the General Counsel's witness.

On cross-examination it seems to me that I am allowed great latitude to this type of questioning. I have been asking or attempting to ask questions to this time concerning grievances which the General Counsel introduced in evidence. Why I must be subjected to this constant harassment is completely beyond me, sir.

Trial Examiner: I am giving the General Counsel a standing objection. I have made my ruling on the proper examination. I have granted you the scope to cross-examine particularly on these grievance papers which were introduced by the General Counsel. However, the General
33 Counsel has made no contention that any employees were laid off or were put in a reduced status as the result of the moving of any equipment. I think we are trying something that is not an issue in the case.

Mr. Lazar: Exactly.

Trial Examiner: This is my objection to it.

Mr. Kovar: It seems to me that the objection goes to the very heart of this matter. We don't believe that there is any issue here, any proper issue here before us and therefore we can only look to the collective bargaining agreement between the parties to see what they are bargaining about concerning the subject matter which is apparently involved in this unfair labor practice.

Now, looking to the grievances which the General Counsel has introduced in evidence, concerning removing of equipment, we have bargained concerning that matter and have a provision in the agreement concerning that matter. Therefore, I am attempting to ask this witness to testify concerning this or these grievances and what are some of the factual background material to them as they apply to this contract.

Trial Examiner: I certainly believe that you are putting in an affirmative defense before there has been any charge made by the General Counsel that there were either layoffs or reductions in force.

* * * * *

34 Q. (By Mr. Kovar.) With respect to General Counsel's Exhibit No. 4-E which is grievance No. 61 alleging the removal of two O. D. Grinders. What classification of employees are assigned to work on O. D. Grinders?

35 A. External grinders or as we sometimes call them, O. D. Grinders.

Q. Does the company have more employees in such classification at the present time than they did on prior to the alleged removal of this equipment?

A. Yes, we do.

Trial Examiner: How many did you have prior to the removal, may I ask?

The Witness: Seven or eight—six, maybe.

Trial Examiner: How many since the removal?

The Witness: We have two more.

Trial Examiner: All right.

Q. (By Mr. Kovar.) Any employees in such classification laid off since the removal of this equipment?

A. No.

Q. Any employees in such classification reduced from that classification since the removal of this equipment?

A. No.

* * * * *

36 Q. (By Mr. Kovar.) With respect to General Counsel's Exhibit No. 4-G which is grievance No. 63 which alleges the removal of one Hauser Jig Borer, in what department was this equipment used?

A. Tool room.

Q. Since April 23, 1963, has there been any reduction in the number of employees, tool room employees employed by the company?

A. No.

Trial Examiner: That is the place where they had two and still have two?

The Witness: Yes, sir.

Q. (By Mr. Kovar.) Directing your attention to
37 General Counsel's Exhibit No. 4-H which was grievance No. 64 and alleging the removal of one Chucker from the plant, sir, do you recall when this equipment was last used by the company?

A. During my investigation I was informed that it was used about 8 or 10 years ago. That is prior to my time, sir.

Q. Were any employees laid off as a result of its removal?

A. No.

Q. Any employee reduced in classification as a result of its removal?

A. No.

Q. With respect to grievance No. 65 which has been identified as General Counsel's Exhibit No. 4-I and alleges

the removal of a Straddle Mill Machine, when was this equipment last used by the company?

A. Oh, several years ago. That is used primarily for pipes. We no longer have a substantial volume of pipe work.

Q. Any employee laid off as a result of the removal?

A. No.

Q. Any employee reduced in classification as a result thereof?

A. No.

38 Q. With respect to General Counsel's Exhibit No. 4-J, Grievance No. 66, it alleges the removal of four Single Spindle drill press machines.

Trial Examiner: No. 66?

Mr. Kovar: Yes, sir.

Q. (By Mr. Kovar.) Has this equipment been used by the company at its Laflin address since the strike?

A. No.

Q. Was there a strike which terminated on or about April 23, 1963?

A. Yes, there was.

Q. Has this equipment been used since April 23, 1963?

A. No.

Q. Have any employees been laid off as a result of the removal?

A. No.

Q. Any employee been reduced in classification as a result thereof?

A. No.

Trial Examiner: How long did this strike last?

The Witness: Eight months.

Trial Examiner: Ending April 23?

The Witness: Yes.

Trial Examiner: These machines were removed in the interim period?

39 Mr. Lazar: No, no, subsequent.

Trial Examiner: Oh, subsequent?

Mr. Lazar: Yes.

Trial Examiner: That is '63, isn't it?

Mr. Kovar: That is right, sir.

Q. (By Mr. Kovar.) Directing your attention to General Counsel's Exhibit No. 4-K which is grievance No. 67 and which alleges the removal of four Traubs Automatic Screw Machines, was this equipment used by the company at its Laflin address since April 23, 1963?

A. No.

Q. Any employee laid off as a result of its removal, sir?

A. No.

Q. Any employee reduced in classification as a result thereof?

A. No.

* * * * *

Redirect Examination.

* * * * *

40 Q. (By Mr. Lazar.) In any of the classifications of any of the employees who were working on any of the machines which were described in any of the grievances that you have just been questioned about, are any of these employees now making less money than they made prior to the strike, sir?

* * * * *

The Witness: I don't believe I can honestly answer that.

Q. (By Mr. Lazar.) You don't know?

A. I don't really know.

Q. You don't really know,

A. That is right.

Q. Now, Mr. Bellush, have you sub contracted out any work since April 23, 1963?

Mr. Kovar: I object to the question.

Trial Examiner: I will sustain. I don't see the relevance of that question.

41 Mr. Lazar: Mr. Trial Examiner, that—this may not have been before us but you didn't limit the Respondent to the scope of the cross.

Trial Examiner: I am limiting the Respondent's counsel to the grievance documents which were introduced by you.

Mr. Lazar: The grievance documents speak for themselves and they include that provision in the contract.

Trial Examiner: I am not going to get into sub-contracting issues. It is in the alleged—it is alleged in the complaint.

Mr. Lazar: On the contrary.

Trial Examiner: It goes beyond the scope of the complaint.

Mr. Lazar: The complaint is quite broad. It doesn't mention any specific paragraph of the contract.

Trial Examiner: You requested information. I am not going to let sub-contracting get into this case.

Mr. Lazar: How did this matter get into the case, the matter of these particular—

Trial Examiner: Because the contract itself provides in the section—"Employees working in such plant or such department who are subject to a reduction in classification or layoff as a result thereof may transfer to the new

42 location will full rights and seniority.

• • • • •

Before you start, I just want to point out that paragraph 8 of the General Counsel's complaint alleges that Respondent has refused and continues to refuse to furnish to the union information relating to the removal of equipment and machines in Respondent's plant.

It refers solely to information and to the removal of equipment. It does not refer to sub contracting. I can-

not by any stretch of my imagination state that the sub
43 contracting issue can arise under that paragraph of your complaint.

You may be heard.

Mr. Lazar: All right. Is that your position, sir?

Trial Examiner: Yes.

Mr. Lazar: We will take strenuous objection to that position on the theory that this information was necessary because at no time did the company, as long as the company was failing to tell the union what it did with the machinery and where it was being used, wasn't able to determine whether or not there had been subcontracting. It seems to me that this is clearly an issue. It was made an issue by the grievances.

• • • • •

46 Q. (By Mr. Lazar.) You are the industrial relations manager of the company, are you not?

A. Yes.

Q. You handled most of these grievances, do you or don't you?

A. Yes.

• • • • •

Q. (By Mr. Lazar.) What are your duties, Mr. Bellush, without looking at your counsel as you have been doing?

Mr. Kovar: Objection; move to strike.

Trial Examiner: Sustained. Strike it.

47 Go ahead.

The Witness: I am in charge of the industrial relations and personnel functions, sir.

Q. (By Mr. Lazar.) Now, in personnel functions, how many people are employed in the personnel department itself?

A. Only two of us currently. Normally there are three sir.

Q. What is your function in the personnel department?

A. Well, I am in charge of the recruiting for office and factory, reviewing of employee performance, handling grievances or issues that arise between the company and the union. I assist in the preparation for arbitration cases and for contract negotiations.

• • • • •

48 Q. (By Mr. Lazar.) Mr. Bellush, whenever requests were made by the union of the company for information, who would they be referred to?

A. Normally to myself or to Mr. Gabriel, our president.

Q. And with respect to the handling of those grievances, who would handle those grievances for the company?

A. I would, sir.

• • • • •

49 Q. (By Mr. Lazar.) Mr. Bellush, with respect to these grievances that were filed, those that have been identified here and are now in evidence, General Counsel's Exhibit No. 4-A through 4-K. At the time that these grievances were filed, were you made aware of what the union's position was and why they wanted the information?

A. Sir, they did not ask me for that information at those grievance meetings.

Q. They didn't talk to you personally?

A. They did, sir.

Q. They did talk to you?

A. Yes, sir, they did.

Q. They didn't ask you for the information?

A. No, sir.

Q. Not at all?

A. Only in connection with one grievance. They were joking with me about it and they said, "Well, we know where it went anyway and what it is used for."

50 Q. They said that?

A. Yes.

Q. Who said that?

A. Mr. Antalek and Mr. Rich.

• • • • •

51 Q. (By Mr. Lazar.) I now show you General Counsel's Exhibit No. 5 for identification purporting to be a letter to the Acme Industrial Company addressed to your attention from Mr. William Antalek, President of Local 310 of the UAW. Do you recognize that?

A. Yes, I do.

Q. Did you receive that on or about the date it bears or somewhere close to that?

A. I received it April 8.

Q. April 8?

A. Yes, sir.

Q. And is it in exactly the same condition that it was in at the time you received it?

A. Well, except these notations on this.

Q. Which notations?

A. "G. C. 5 for identification."

Q. Except for that?

A. And I put this on here.

Q. What is that?

A. That is an abbreviation for "received." The date of 4/8/64 is on there, and my initials.

Q. All right.

Mr. Lazar: I will now ask that General Counsel's Exhibit No. 5 for identification be received, Mr. Examiner.

52 Mr. Kovar: No objections.

Mr. Lazar: And I will ask for leave to substitute therefore duplicate copies.

Trial Examiner: Granted. It will be received.

(Whereupon, GENERAL COUNSEL'S EXHIBIT NO. 5 was received into evidence.)

• • • • •

Q. (By Mr. Lazar.) Now, Mr. Bellush, I show you General Counsel's Exhibit No. 6 for identification purporting to be a letter from you on behalf of the company to Mr. William Antalek, President of Local 310, UAW, AFL-CIO, dated April 16, 1964 and ask if you recognize it?

A. Yes, I do.

Q. Was that letter written by you?

A. No, sir.

Q. Does it bear your signature?

A. Yes, sir.

Q. Did you read it before it was signed?

A. Yes, sir.

53 Q. That isn't your signature you say?

A. No, that is my signature I said.

Mr. Lazar: I will ask that General Counsel's Exhibit No. 6 for identification be received in evidence as General Counsel's Exhibit No. 6.

Mr. Kovar: No objections.

Trial Examiner: It will be received.

(Whereupon, GENERAL COUNSEL'S EXHIBIT NO. 6 was received into evidence.)

• • • • •

54 Mr. Lazar: I have no further questions of this witness.

However, I'd like to reaffirm at this time my basic objection to the Trial Examiner's ruling and take exception to the ruling. I realize I have an automatic exception. However, I want it understood that the reason for my exception to the ruling with respect to testimony on sub contracting does basically to the issue as to whether or not this information would have elicited, if granted, would have elicited such information. In other words, if the company had told the union why it was removing the machinery and where it was removing it to, then it would necessarily follow that if the company was sub contracting, the union would have had certain rights under the contract and also

under the law if not expressly by virtue of the contract to demand bargaining over that subject.

Not having knowledge of that fact, the union was in no position to make any demand or to process its grievances.

Trial Examiner: I am making the same statement.

Your complaint very specifically refers to information
55 related to the removal of equipment and machines.

Now, you have had an investigation in this case. Had you found a violation of the sub contracting clause in the investigation of this charge, you could have had—you could have asked the union to amend the charge and brought all of that in.

* * * * *

56 Q. (By Mr. Friedman.) Mr. Bellush, at the present time, approximately how many employees of the company are in a layoff status?

A. About 36.

Q. About how many?

A. Yes.

Q. About 36?

A. Yes.

Q. And is that the approximate number that have been on layoff ever since the strike ended in April of '63?

A. No, sir.

Trial Examiner: It is?

The Witness: No, sir, it is not.

Q. (By Mr. Friedman.) Were there a larger number of employees than that on layoff at any time since April of '63?

57 A. Yes, many more were laid off right after we resumed operations.

Q. Would it be correct to say that the figure of people on layoff since the strike ended has varied between approximately 30 some which is the present figure to about 75 or so at the maximum?

A. It was a little higher than that, really.

Q. Or a little higher than that?

A. Yes.

• • • • •

58 Mr. Kovar: Mr. Friedman, if it would help, I'd be willing to stipulate that all the equipment mentioned in any of these grievances requires an employee to operate them.

Mr. Friedman: All right. I will accept that stipulation to save time.

The Witness: Not continuously.

Q. (By Mr. Friedman.) If all of these machines that are mentioned in the various exhibits were in the plant and were being operated on a relatively full time basis, they would require additional employees, would they not?

• • • • •

The Witness: If they were in the plant, yes, and if we had work to run on them if they were operated on a full time basis, yes, we'd need employees on most of them. Some aren't that way. You can spread employees over that machine as well as others.

• • • • •

59 Q. (By Mr. Lazar.) Mr. Bellush, in addition to the 36 people who are presently on layoff status, are there not some people who you no longer consider on layoff status because their seniority has terminated since the strike, since the termination of the strike?

A. Yes.

Q. About how many people are those?

A. Must be 7 or 8 or 9.

Q. How many people were employed in the unit that is described in the contract prior to the strike?

• • • • •

The Witness: Approximately 188, 190.

Q. (By Mr. Lazar.) How many are employed in the unit at the present time?

• • • • •

A. One hundred and fifteen.

• • • • •

61 Afternoon Session.

Trial Examiner: The hearing will be in order.

RUDOLPH RICH, called by and on behalf of Counsel for General Counsel, National Labor Relations Board, having been first duly sworn was examined and testified as follows:

Trial Examiner: Give your name and address to the Reporter.

The Witness: Rudolph Rich. I live at 6216 Belleplaine Avenue.

Direct Examination.

Q. (By Mr. Lazar.) Would you speak up loudly, Mr. Rich, so that everybody can hear you.

A. Yes.

Q. Now, Mr. Rich, by whom are you employed?

A. I am employed by Acme Industrial Company.

Q. And for how long all tolled have you been employed by that company?

A. All tolled, I believe it amounts to about 22 years.

Q. And how long continually?

A. Fourteen years, approximately 14 years.

Q. Now, do you have any connection with the union, sir?

A. I do.

Q. What union is that?

62 A. UAW, Local 310.

Q. What is your position with that local?

A. I am the vice president of Local 310.

Q. Have you any other capacity with them?

A. Yes, I have.

Q. What was that?

A. Trustee.

Q. Have you had any other capacity?

A. I have been a steward.

Q. And have you been a steward in the last year?

A. Yes, I have.

Q. Now, Mr. Rich, during the time that you were union steward, did you have any occasion to file any grievances, sir?

A. I did have occasion.

Q. I now show you General Counsel's Exhibit No. 4-A in evidence and ask you if you recognize that?

A. I do recognize this grievance.

Q. Now, did you file that grievance?

A. Yes, I did file the grievance.

Q. Now, what date was that grievance filed?

A. Well, it is January 13 of 1964.

Q. What was the numbered designation that you gave that grievance?

A. The number was 54.

63 Q. Now, Mr. Rich, prior to filing that written grievance which you now hold in your hand, did you have any occasion to talk to anyone about the subject matter of that grievance?

A. I did.

Q. To whom did you talk about it?

A. I spoke to foreman Paul Steelhammer.

Q. Now, about when was this that you talked to him?

A. Well, it was within a five day period which our contract states—

Q. What do you mean by a five day period?

A. Previous to this filing of the written filing of the grievance.

Q. Where did this conversation take place with Mr. Steelhammer?

A. It took place on the second floor in Department 33

which is referred to as the O. D. Grinding Department, better known as the external grinding department.

Q. Now, who was present besides yourself and Mr. Steelhammer?

A. There was no one else present.

Q. What, if anything, did you say to him and what, if anything, did he say to you?

A. Well, I asked him if he was willing to give us—meaning the union as a union representative I referred
64 to in the plural—

Q. Speak up louder, please.

A. I asked Mr. Steelhammer if he would give me as a union representative the information that we felt was needed when we were aware of the fact that machinery was being moved out of the plant which without this information forthcoming we were unable to continue—or even originate the filing of a grievance.

Q. Well what else, if anything, did you say to him?

A. Well, I will have to put it this way: That he was unable to give me an answer at this time and told me that he'd return within about five minutes or so with the information I was seeking.

Q. But prior to going away, was anything else said by you to him with respect to this information that you were requesting?

A. Prior to that time I can't remember offhand but the only thing I remember that he was—from the way I gathered he was unable to commit himself until he saw the industrial relations manager.

Q. When he returned what, if anything, did he say to you?

A. Well—

Q. By the way, who was present at the second conversation?

65 A. Same two people: Mr. Steelhammer and myself.

Q. This was five minutes after the first one?

A. Approximately five minutes.

Q. What, if anything, did he say to you?

A. Well, he stated that the company felt that they were not in violation of the contract and therefore they did not feel compelled to give the union any definite answer as to why the machine was moved or where, the whereabouts of it.

Q. Did you then say something else to him?

A. Yes, I did.

Q. What did you say?

A. Well, I asked him if he was aware of the fact that the reason we needed this information was to be able to process this grievance which I could see now was to be forthcoming because he had not given the information we were seeking.

* * * * *

66 Q. (By Mr. Lazar.) Now with respect to General Counsel's Exhibit No. 4-D, did that—N. 4-D that you now have in your hand, did you file that grievance?

A. I did.

Q. What was the date that you filed it on?

A. The date of filing was the 10th of February 1964.

67 Q. Now, prior to filing that grievance, did you have a conversation with somebody about the subject matter of the grievance?

A. I did.

Q. With whom was that?

A. The foreman, Eddie T of the O. D. department.

Q. Is Eddie T his full name?

A. No, it is not his full name. He has a last name that I imagine is quite hard to be pronounced. The spelling alone is enough to throw you. So the company and the union refer to this employee or this foreman as Eddie T.

Q. Now, where did this conversation take place and when?

A. This conversation took place on the second floor in the O. D. grinding department.

Q. When did you say this conversation took place?

A. Well, I would say within a period of five days preceding the written stage of the grievance. As to the exact number of days I couldn't say but it was approximately within five days previous.

Q. Now, what did you say to Mr. T and what did he say to you with respect to the filing of this grievance or the subject matter of this grievance?

A. Well, I asked Eddie T if he would be able to give me the information as to the movement of this machine.
68 In fact it is in the plural. It is more than one. He gave me the same excuse that the previous foreman and—the previous foreman Steelhammer gave me that he would have to get the information and return to me to see what information he could give me.

Q. What happened?

A. He told me that the company still held the position that they were not violating the contract and therefore they felt they were not compelled to give the union this information.

Trial Examiner: They haven't—they never gave you the information?

The Witness: They never did.

Q. (By Mr. Lazar.) Now, Mr. Rich, did you say anything to him when he told you that?

A. I did.

Q. What did you say?

A. Well, I asked him if he personally didn't feel that we were entitled to it and of course he wasn't at liberty to say what his personal feelings were. He was only relating the company's official stand on this. I asked him if he

didn't think that we were right in contending that there might be people deprived of recall to their original job classifications or if he didn't think that we felt that the
69 people would be downgraded in their classifications.

Q. By the way, Mr. Rich, with respect to these grinding machines, were these machines used after April 23, 1963?

A. Yes, they were.

Q. Can you tell me who used those machines?

A. Well, offhand, I could name about three persons and I believe there were more involved but I think three will suffice.

Q. Name them.

A. There was Milt Grazynski, John Mangin and there was Ed Jackson.

Q. So that these machines were used after the strike terminated?

A. Yes, they were.

Q. Now, what classifications were these people in, job classifications, if you can recall?

A. I can recall Milt Grazynski held the "B" classification of an O. D. grinder and John Mangin held the "A" classification which in his case included the thread grinding classifications. Besides being leadman previous to the strike, it was our understanding that when he returned that he was still in that same classification. In other words, whoever was the leadman in that department, the setup was so arranged that he was also a leadman in the thread grinding and would receive the top rate of that
70 pay.

Q. Now, was that classification ever changed as a result of the removal of the machinery?

A. That classification has been, I believe, went to arbitration since the strike ended.

Q. You mean the grievance over the particular—

A. Over thread grinding which included a phase of thread grinding which had originally be accepted by the company as part and parcel of the thread grinding classification.

Q. Was this prior to the removal of the machinery or subsequent to the removal of the machinery?

A. It was subsequent to the removal of the machinery.

Q. Now, Mr. Rich, I will ask you to look at General Counsel's Exhibit No. 4-F, would you, and I ask you if you recognize that grievance?

A. I recognize it.

Q. What is the number of that grievance?

A. No. 62.

Q. When did you file that grievance?

A. It was filed on the 10th of February, 1964.

Q. Prior to the filing of that grievance, did you have a conversation with anybody regarding the subject matter of the grievance itself?

A. I did.

71 Q. Could you tell me who it was that you had the conversation with?

A. Foreman Eddie T.

Q. What, if anything—where did this conversation take place and who was present?

A. Second floor of the O. D. grinding department.

Q. Was there anybody else present besides yourself and Mr. T?

A. Nobody else was present.

Q. What, if anything did you say to Mr. Eddie T about this?

A. I asked him if the union could be given the information as to the removal of the thread grinding machines out of the plant, the reasons for moving them and the whereabouts that they were to be moved to.

Q. By the way, now, you are apparently—apparently

in the last grievance—the previous grievance you were talking about O. D. grinders, is that correct?

A. No, I believe that is thread grinding.

Q. Thread grinding machines, also?

A. Right.

Q. This was a subsequent grievance?

A. That is correct.

Q. By the way, Mr. Rich, you say that the question of the classification of the thread grinders has been
72 arbitrated, sir?

A. That is correct.

Q. Has the question of the removal of the machinery itself ever been arbitrated?

A. It never has been arbitrated.

Trial Examiner: What is the current status or stage of these grievances?

The Witness: They are pending.

Trial Examiner: They will ultimately go to arbitration, is that correct?

The Witness: I wouldn't say that they will or they won't.

Trial Examiner: If you don't know—

Mr. Lazar: Well, the answer, Mr. Trial Examiner, is obviously without the information. I don't see how in the world they can process these grievances.

Mr. Kovar: When counsel wishes to testify I assume he will be sworn.

Trial Examiner: Well—

Mr. Lazar: I don't see how you can arbitrate a question that you can't get the answer to beforehand, sir. The question that arises here is whether or not they are entitled to the information or not.

Trial Examiner: There are two questions here: One is whether or not they are entitled to the information
73 and two, whether or not the problem before us should

be before the Board or in arbitration. Those are the two questions.

Mr. Lazar: Well, I don't see that that is—

Trial Examiner: Well, let's not argue the point while examining the witness.

Mr. Lazar: How can they arbitrate from information they don't have?

Q. (By Mr. Lazar.) Mr. Rich, who was it that you had a conversation with?

• • • • •

The Witness: I had this conversation with Foreman Eddie T.

Q. (By Mr. Lazar.) Where did this conversation take place?

A. Second floor in the O.D. grinding department.

Q. What, if anything, did you say to him and what, if anything, did he say to you?

A. I asked him for information which the union was seeking, the reason of the removal of these thread
74 grinding machines and besides asking the reason I asked where they might be going.

Q. When did this conversation take place?

A. Oh, it had to be within the five day period preceding this written stage of the grievance. As to the exact number of days, I couldn't state.

Q. All right. Now what, if anything did you say to him besides that and what did he say to you?

A. Well, I made it known that we felt suspicious that the company was removing these machines for purposes of subcontracting and therefore we felt that were—we felt that they were in violation of the contract which were a party to.

Q. What did he say?

A. Well, Eddie T.—I will have to give a little background on this—he doesn't say much.

Trial Examiner: Just say what he said.

The Witness: Right. He said as much as he was told to repeat to me by the personnel director that since they felt they did not violate the contract they were not compelled to give that information to the union.

Q. (By Mr. Lazar.) Now, Mr. Rich I will now show you General Counsel's Exhibit No. 4-G and ask if you recognize that document, sir, purporting to be—

75 Trial Examiner: What number is this?

The Witness: This is No. 63.

Mr. Lazar: All right.

Q. (By Mr. Lazar.) Now, Mr. Rich, when did you file that grievance?

A. I filed this grievance on the second—March 2, 1964.

Q. With whom did you file it—strike that question.

Did you have any conversation with anybody about the subject matter of that grievance?

A. I did.

Q. Prior to the filing of the written grievance?

A. I did.

Q. With whom?

A. Foreman Paul Steelhammer.

Q. When did this conversation take place?

A. It took place within a period of five days previous to the writing of this grievance.

Q. Who was present?

A. Foreman Steelhammer and myself.

Q. Where did the conversation take place?

A. Second floor of the O.D grinding department.

Q. What, if anything did you say to him and what, if anything, did he say to you?

A. I asked him in—I asked him if he could furnish

76 information to the union as to the reason and the destination of the machines being moved from the premises of Acme Industrial Company.

Q. Did you say anything else to him?

A. Yes. Well, this was in the nature of a question. I asked him if he was aware of the fact that the company was in violation of the contract.

Q. What did he say to you?

A. Well, this was a repetitive answer that he had given me previously that the company was taking the position that the—that they felt they were not violating the contract and therefore did not feel compelled to give the union the information they were seeking.

Q. All right. Did you then say anything else to him, sir?

A. I asked him if he realized that there might be a chance that these machines that were being moved out of the plant would be the cause of people on layoff, never to regain their original jobs.

Q. Did you say anything else to him?

A. Furthermore I asked him did he realize that this could affect the status of employees within the company if this were to continue, sir, to the effect that they may be downgraded in their classification.

I also asked him since the union was contending—
77 or the company was contending that they were not in violation of the contract why couldn't he divulge this information to me and the answer was still the same because they felt they were not in violation of the contract.

* * * * *

78 Q. (By Mr. Lazar.) Mr. Rich, will you tell us whether or not any employees have had a changed job classification or reduced wages since the removal of any of the machinery that has been referred to in any of the grievances that the union has filed and are now in evidence. That is General Counsel's Exhibit Nos. 4-A through 4-K.

A. Yes. I know of several employees that have been reduced in classification.

Q. Well, can you name some of them.

A. Johnny Alexander and Ted Wendell, both tool and diemakers is their classification or tool makers.

* * * * *

Q. Let me put it this way: Were either of these men working on any machine that was in the tool room at the time of the settlement of the strike on April 23, 1963 and who as a result of the reclassification, the removal
79 of the machinery subsequently were no longer working on that machinery?

A. I believe so.

Q. Now, can you tell me for how long after the settlement of the strike and the execution of the contract these men worked on machines and what machines they worked on?

A. Well, we have a big assortment of machines in the tool room.

Q. What machines were they working on immediately after the strike?

A. What machines that, I really could not answer.

Trial Examiner: Do you work in this room with these people?

The Witness: I don't work in this room, that is correct.

Q. (By Mr. Lazar.) Well, in other words, is this tool room one of your areas in which you were handling grievances, sir?

A. It is.

Q. Now, what was the nature of the reclassification of these people?

A. Well, from the way I understand it they were tool makers and they now had the classification of a tool room machinist.

80 Q. Well, when did this reclassification take place?

Trial Examiner: He said he understood that—

Q. (By Mr. Lazar.) How did you understand it, from whom?

A. Well, I have to explain this a little bit.

In this procedure since the strike has ended, the President of the Local, William Antalek who is Chairman of the bargaining committee has more or less been designated by the company to handle recalls and layoffs of people involved since the ending of the strike and he is more aware of those facts than I am. I am only repeating what he has told me.

Q. In other words, you don't know of your own knowledge, is that it?

A. That is right.

* * * * *

Cross-Examination.

Q. (By Mr. Kovar.) Mr. Rich, with respect to grievance No. 54 which has been identified as General Counsel's Exhibit No. 4-A, in response to a question of General Counsel you indicated that the grievance was filed within the five-day period. Could you explain to me what five-day period you were referring to in that answer?

81 A. Could I see the grievance that you are referring to?

Q. Yes.

(Document tendered.)

A. Yes, there is a period in the contract that stipulates that the oral discussion will take place and the written stage of the grievance to follow.

Trial Examiner: That is step 2 if I am reading correctly: "If the matter is not satisfactorily settled, the

steward or area committeeman shall reduce the grievance or complaint to writing within given working days."

The Witness: That is right. That is the one I am referring to.

* * * * *

82 Q. (By Mr. Kovar.) Now, you also indicated in your direct testimony with respect to grievance No. 54 that when you asked the foreman Steelhammer for certain information you indicated that you couldn't even file a grievance without this information, is that correct, isn't that what you testified to earlier?

A. Well, I will give you an answer in just a minute. Please repeat the question.

Mr. Kovar: Mr. Reporter, will you please read the question.

(Record read.)

The Witness: If that is my testimony, that is correct.

Q. (By Mr. Kovar.) How can you explain, then, your filing of the grievance?

83 Mr. Lazar: Objection.

Trial Examiner: Sustained. I don't care how the grievance was filed. It was filed.

Q. (By Mr. Kovar.) With respect to your testimony concerning grievance No. 60, you testified that the grievance was filed within five days. Were you then referring to within five days of your conversation with the foreman?

A. I was.

Q. I'd like to show you a copy of grievance No. 60. After reading the first sentence of that grievance which was signed by you, would you like to correct your testimony, sir?

* * * * *

84 The Witness: I think I can clarify this.

Now, I have only been allowed to read the first sentence—I was told to read the first sentence and then

make an analysis of why the dates differ. I believe if we continue reading, this will indicate that we were refused permission or I was the first committeeman in the Local Union that was refused permission to write this grievance as had been consistently done since the inception of the local back in 1946 and I was prevented from writing this grievance in the usual manner which consisted of writing it on company time.

Mr. Kovar: Mr. Trial Examiner, I am having a hard enough time getting the question between objections here. I would appreciate it if I could at least get an answer to a question I actually asked.

85 Mr. Lazar: I think he answered the question.

Trial Examiner: You asked him if he wanted to change his testimony. I cannot recollect his prior testimony.

The Witness: I would say that this was a change in this respect: That I was denied the privilege of writing this and not only the privilege, it had been an accepted fact that the Local Union was and always had written grievances on company time and the delay was there and when there is a delay, naturally, it cannot conform within the five day period previously allowed.

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90 Mr. Kovar: Mr. Trial Examiner, we are concerned with the veracity or the memory of this witness.

91 Trial Examiner: I am not much concerned with it because I don't think his testimony is going to be the basis of any decision of mine.

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Q. (By Mr. Kovar.) Mr. Rich, did you testify earlier that in your opinion employees of the company had been reduced in classification as a result of the removal of equipment?

A. I did.

Q. Can you identify any employees?

A. I believe I did previously. It is John Alexander and Ted Wendell.

Q. Do you have firsthand information as—

A. No, I don't have firsthand information as to the reduction.

Mr. Lazar: Excuse me, Mr. Trial Examiner, we agreed that this testimony was hearsay?

Trial Examiner: We agreed that testimony in this regard was hearsay.

Mr. Kovar: As of these two?

The Witness: Yes.

92 Q. (By Mr. Kovar.) Do you know of anybody else?

A. Offhand, I don't know of anybody else.

Q. As a union representative, are you aware that the company gives written notice to the union of every employee who is laid off? Are you aware of that?

A. Yes, I am.

Q. Are you aware that the company gives written notice of any employee who is reduced in classification?

A. I am.

Q. With respect to anyone of the grievances introduced in evidence by General Counsel, can you tell me if any employee had been laid off within five days prior to the filing of anyone of these grievances? And you take as much time as you wish to study them if that is required sir.

A. Will you repeat that.

Trial Examiner: I don't think that this is any allegation.

Mr. Lazar: There is no such allegation. I don't think it is material or pertinent.

Trial Examiner: Until the General Counsel alleges that someone was laid off within the five day period or even without it, I will sustain the objection, Mr. Kovar.

Mr. Kovar: I think this testimony goes beyond
93 that, Mr. Trial Examiner. I think this testimony goes to the fact that not only has there been no allegation concerning layoff or reduction of classification, there is first hand information available to the union and therefore to the General Counsel concerning this matter and that the silence with respect to it now is not a matter that they don't know. It is a matter that there hasn't been any, Mr. Examiner.

Trial Examiner: I am not interested in that. They haven't alleged any. That settles it. No. 8(a)(3) has been alleged.

Mr. Kovar: It is not a question of that. I have a difficult time myself trying to figure out the theory upon which this case has been based but if we look at the contract, it seems to me that the information available to the union from which I am trying to get testimony concerning is sufficient for it to administer the contract and police the contract.

Now, unless I can get such testimony in the record—

Trial Examiner: You are not going to get testimony of this type into the record unless the General Counsel introduces testimony which relates to an allegation.

The objection is sustained.

* * * * *

94 TONY AUDIA called by and on behalf of Counsel for General Counsel, National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination.

Q. (By Mr. Lazar.) Mr. Audia, what is your business or occupation?

A. I am an international representative for the United Automobile Workers.

95 Q. Now, Mr. Audia, do you know of the existence of Local 310 of your union?

A. I do.

Q. What kind of an organization is that?

A. It is a labor organization, sir.

Q. That is a conclusion. Just tell me what kind of an organization it is.

A. It is an organization organized for the purpose of representing all of the maintenance and production employees for the purpose of collective bargaining for and on behalf of all of the employees of Acme Industrial Company.

Q. Who does it admit to membership?

A. Well—

Trial Examiner: Isn't that stipulated?

Mr. Lazar: No. It was not admitted. I asked for a stipulation and I did not receive one.

Trial Examiner: It is not denied.

Mr. Lazar: Well, it is.

Trial Examiner: All right.

The Witness: The local union is comprised of all of the maintenance and production employees of the company.

Q. (By Mr. Lazar.) Are these all members of the Local?

96 A. Yes, sir.

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WILLIAM ANTALEK called by and on behalf of Counsel, National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Be seated and give your name and address, home address, please.

The Witness: My name, sir, is William Antalek. I reside at 5200 South Damen, Chicago.

Direct Examination.

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Q. Mr. Antalek, do you have any position with the local union, Local 310, UAW?

97 A. Yes, I do. I am president of the Local Union, sir.

Q. Now, subsequent to the execution of the contract of April 23, 1963, has the company ever notified you of any reclassifications of employees?

A. They have not notified me personally, sir, but they have notified the union through the procedure outlined in the contract.

Q. Well was the union given any notice of the reclassification of any employees?

A. Yes, they were, sir.

Q. Now, I will show you General Counsel's Exhibit No. 5. Do you recognize it?

A. Yes, I do, sir.

Q. Did you send that letter to the company on April 3, 1964?

A. I did.

Q. Now, why did you seek the information that you asked for in that letter?

A. Well, sir, we felt that unless the company was willing to supply the information that we had requested in this letter we would not be able to administrate the various articles and sections of the contract and also properly process grievances which at that time were pending.

98 Mr. Lazar: I have no further questions.

Cross Examination.

Q. (By Mr. Kovar.) Which grievances couldn't you process, Mr. Antalek?

A. The grievances pertaining to the removal of the machinery, grievances pertaining to the farming out of work, grievances pertaining to people on layoff.

Q. Can you identify a little more closely as to what grievance you are talking about?

Trial Examiner: Are these the grievances which have been placed in evidence that you are referring to and filed in the grievance procedure?

The Witness: Yes, sir.

Trial Examiner: All right.

Q. (By Mr. Kovar.) Were there any other grievances or are these the ones you are referring to?

A. Offhand, I don't recollect if these—if there were others. I know that these were at that time pending.

Trial Examiner: These were the only times they were put in issue, either in arbitration proceedings or at least in this proceeding, at least we know that.

Q. (By Mr. Kovar.) Does the union receive written notification of any employees or employee who is laid off?

Mr. Lazar: Objection.

Trial Examiner: Has this been answered already?

99 Mr. Lazar: We have already decided that this is not an issue.

Trial Examiner: I think we have. Thank you. Sustained.

Mr. Kovar: I don't think it has been decided that this is not an issue, Mr. Trial Examiner.

Trial Examiner: I would now rule that it is not an issue.

Mr. Kovar: May I be heard before you rule, Mr. Trial Examiner?

Trial Examiner: Yes, sir.

Mr. Kovar: Under Article 6, Section 10 of the collective bargaining agreement, the parties have negotiated a provision which requires that where equipment is moved to another location of the company an employee who is then working in the plant who is subject to reduction in classification or is subject to layoff as a result thereof has certain rights.

Trial Examiner: Yes, that is right.

Mr. Kovar: If the union knows that there are no such employees as we have attempted to indicate is the fact through the testimony we have sought to introduce here, then it seems to me clear on the face that the additional information as to where equipment is moving is completely irrelevant to this contract, to the administration, to

100 its enforcement.

Now, unless I can get into the record clear testimony the fact that the union knows very well that no employee has been laid off as a result of removal of equipment and knows very well that no employee has been reduced in classification as a result of this, I have an open question at which point the General Counsel may argue, "Well, we don't know whether anyone has been laid off or not, and therefore, it might be, this information might be relevant so why not give it."

So, facing that kind of argument, this is relevant.

Trial Examiner: I will accept that kind of argument to the pleadings in this case. So I still consider this question irrelevant as to what is contained within the issues here which I construe is much more narrow than apparently the parties.

This is a very narrow complaint. In effect you are anticipating allegations which have not been made. In other words, asserting an affirmative defense where there is no attack, where no attack has been placed by the General Counsel. I don't think that is necessary. The General Counsel has not made the direct allegation and submitted evidence in support thereof and there is no necessity for you to rebut it.

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101 Mr. Kovar: Mr. Trial Examiner, at this time I will renew the motion which was entered by stipulation at the opening of the hearing and in oral fashion refer that motion and the reasons thereto set forth: I do not believe that the complaint or the evidence supporting it alleges, much less shows a violation of the National Labor Relations Act.

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104 [Trial Examiner] . . . If I reach a decision and say that the Board should accept jurisdiction, then I will reach and only then the question of the relevancy of the information requested. Therefore, I am reserving decision on your motion, naturally.

Mr. Kovar: Respondent would like to call as its witness, Mr. Thomas J. Bellush.

Trial Examiner: All right.

THOMAS J. BELLUSH called by and on behalf of the Respondent, having been first duly sworn, was examined, and testified as follows:

Trial Examiner: Mr. Bellush, you are a recall witness. You are still under oath.

The Witness: Yes, sir.

Direct Examination.

Q. (By Mr. Kovar.) Mr. Bellush, directing your attention to General Counsel's Exhibit No. 4-D which is grievance No. 60, can you tell me on what date the thread grinding machines there involved were removed from the premises of the company?

A. The thread grinding machines were removed January 25, 1964.

105 Q. Mr. Bellush, did the parties, the union here involved and the company engage in an arbitration proceeding, one case of which involved an issue of threading grinding?

A. Yes, they did.

Mr. Friedman: Objection.

Mr. Lazar: Objection.

Trial Examiner: On what ground?

Mr. Friedman: On the ground that it is irrelevant.

Trial Examiner: Well, it seems to me that we have had a great deal of testimony on this issue and I do rather deem it irrelevant but I did suggest that the award would settle the interrogation of one of the witnesses within the questions.

So, I think within those circumstances I will have to admit it. Whether I am going to give it any weight or not, I doubt. I did make that statement in an effort to bring to a conclusion the testimony on this case which was getting us nowhere.

Mr. Kovar: I did not introduce the subject matter of this arbitration, Mr. Trial Examiner.

Trial Examiner: I realize that.

Q. (By Mr. Kovar.) Mr. Bellush, did you answer my question yet?

Trial Examiner: No, he didn't answer it yet, I don't believe he did.

106 The Witness: Will you read the question?

Trial Examiner: Would you repeat the question, Mr. Kovar, for the witness.

Mr. Kovar: All right. I—

Trial Examiner: The question was: Was the subject in this regard subject to arbitration, the dispute?

Q. (By Mr. Kovar.) Was there an issue concerning the work of the grinders, the thread grinders submitted to arbitration by the parties?

A. Yes, there was.

Mr. Lazar: Objection; on the grounds—

Mr. Kovar: This is the same objection that we have just discussed, Mr. Trial Examiner.

Mr. Lazar: This is the question as to whether the subject of the—as to whether the grinders had been submitted to arbitration whereas the grievance itself refers to the thread grinding machines.

Now, I think this is basic and I think this was a misunderstanding that we had in Mr. Rich's testimony.

Trial Examiner: Let's get the award in. I doubt if I will give it any weight or consideration but I opened the door to it myself and I shall pay the penalty.

The objection is, therefore, overruled.

Q. (By Mr. Kovar.) Now, for the third time, Mr.
107 Bellush, did the parties submit to arbitration an issue involving the work of—on the thread grinding equipment?

A. Yes, we did.

Q. On what day was that arbitration hearing held, Mr. Bellush?

A. January 24, 1964.

Mr. Kovar: May we go off the record, Mr. Examiner, please.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record, please.

Mr. Kovar: Would you identify this document, please, Mr. Bellush.

The Witness: Yes. This is an arbitration award received from—an arbitration award received from Harry Abrahams.

Q. (By Mr. Kovar.) Does this award have anything to do with the case we have been discussing here?

A. Yes.

Q. Does this arbitration award cover the grievances involving work on the thread grinding machines which was referred to by Mr. Rich in his direct testimony?

A. Yes, it does.

Mr. Friedman: Just a minute; objection. Are you asking the witness whether this arbitration refers to any 108 of the grievances which are in evidence?

Mr. Kovar: No, sir.

Trial Examiner: No.

Mr. Kovar: I would like to enter into evidence as Respondent's Exhibit No. 1 a photostatic copy of the arbitration award referred to by Mr. Bellush.

Mr. Friedman: Objection to its being received into evidence, Mr. Examiner, Respondent's Exhibit No. 1, on the ground that the exhibit is not relevant to any of the issues in this proceeding and it being apparent from the face of the document itself that it does not relate to any of the grievances which were presented in the record of this case.

Mr. Lazar: General Counsel will join in this objection.

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110 Trial Examiner: The document is admitted.

Q. (By Mr. Kovar.) Mr. Bellush, did you participate in the collective bargaining negotiations between this union and this company for the current contract?

A. Yes, I did.

Q. Can you identify this document, please?

A. Yes. This is the 1959 contract that expired prior to the negotiations.

Q. Did the 1959 contract between the parties have a provision concerning transfer of equipment?

A. Yes, it did.

Q. Would you identify that section that you are referring to.

* * * * *

111 Mr. Kovar: I'd like to have it marked for identification as Respondent's Exhibit No. 2, please.

(Whereupon, Respondent's Exhibit No. 2 was marked for identification.)

Q. (By Mr. Kovar.) Could you identify the section of the contract which relates to transfer of equipment?

A. Page 13, Article 6, Section 7, there is a clause here that relates to transfer of equipment.

Q. During the negotiations for the current collective bargaining agreement, was that section of the old contract discussed between parties?

A. Yes, it was frequently.

Q. Did the union make any proposal for the change of that section of the contract?

A. Yes.

Mr. Friedman: Objection; on the ground of irrelevance, Mr. Examiner.

Trial Examiner: Well, I don't know what counsel has in mind. The only reason that I can see is that if the union has made certain proposals during negotiations, those proposals may have some bearing on the fact though

whether or not the union waived the right to claim for and it received under the contract. There must be a clear and unmistakable waiver, of course, before the union
112 is foreclosed from raising issues which is not explicitly covered by the contract.

Mr. Lazar: Mr. Trial Examiner, Section 7 refers to layoff as a result of the removal of machinery and the same paragraph in the new paragraph it is, which we have already found to be irrelevant. We have already excluded this from the issue. This is the same paragraph that he has been talking about right along. This is not the only paragraph and this is not the only section upon which these people base this need for information.

Now, this is a conclusion that we—that they have come to but it is very obvious from the grievances themselves that this was not the paragraph that was wholly relied upon.

What is the purpose of showing this section? Is it to show that there was change and therefore there had to be bargaining on this issue?

Mr. Kovar: Yes, sir, and it shows the extent and the nature of the bargaining which took place.

Trial Examiner: Are we going through the negotiations which led to this contract or are you going to rely on the change?

Mr. Kovar: I am going to attempt to introduce testimony concerning the negotiations themselves concern-
113 ing the subject matter that was discussed and the scope of the negotiations concerning this matter.

Mr. Friedman: Mr. Trial Examiner, before we get into that area which may be a lengthy area, I'd like to make this suggestion: I think that your observation, in your observation you put your finger on the heart of the issue when you talked about the possibility of waiver in the course of negotiations.

Now, I would withdraw my objection to this questioning

with the thought in mind that if this questioning were directed to whether or not there was any negotiations with respect to the union's right to receive information. If there was a waiver of the union's right to receive information in the course of negotiations, that might be relevant. But all of the other topics that go into the collective bargaining contract are not in issue.

Trial Examiner: I am not going to reopen the negotiations that lead to either of those contracts or particularly to the second one because if I can say, if you can establish that the union waived its right to information during these negotiations, that would be one thing. But to say that the union had waived any other rights in this contract, you have opened the door to an entirely new issue.

Mr. Kovar: Mr. Trial Examiner I will submit that counsel for the Charging Party has forgotten that the 114 letter of request that we are here involved were requesting information, the unfair labor practice charge that we are here involved with and the complaint that was issued in this case all relate to information for the administration and application of the collective bargaining agreement, not a general request for information to help the agent in its bargaining status in the future. It is related strictly and solely to the administration and execution of its rights under that collective bargaining agreement.

Now, how we can divorce from that narrow issue the background to this or of this collective bargaining agreement, seems to me to ignore the very claim here. I quite agree that if we are putting the Board in contract interpretation at this point, I think this is a fault with this case. But this is argument and you will be assured that I will make this argument later on.

Trial Examiner: My point is that I don't think that the union could ever waive the right to any information necessary to administer any clause of a collective bargaining.

That waiver is clearly put in writing. This is a fundamental statutory right. Supreme Courts have upheld it time and time again. I don't think that they could waive that right.

Mr. Kovar: There has been no attempt to argue that.

115 Trial Examiner: I don't see the relevancy.

Mr. Kovar: The relevancy is that the information requested has been related solely to the administration of this contract unless, therefore, the information requested is relevant to this contract it seems to me to that extent the negotiations can waive additional information.

Trial Examiner: The only disagreement has been, I believe, that this relates to Article 6, Section 10. They claim it also relates to the sub contracting clause, Mr. Kovar.

Mr. Kovar: I can't get to other sections of the contract until I get through one and I apparently can't even get through one over the objections here.

Trial Examiner: I am going to sustain the objection.

Mr. Kovar: I'd like to make an offer of proof Mr. Examiner.

Trial Examiner: Yes, do that.

Mr. Kovar: I would like to state that if questioned concerning the negotiations reaching the current collective bargaining agreement between the parties, that this witness would testify that the union requested change in the language of the old contract which I would submit in evidence which has been identified, I believe as Respondent's Exhibit No. 2.

Trial Examiner: Be sure to offer it.

116 Mr. Kovar: That the witness would testify that the union proposed changes to that language. That the union proposed that the company pay for transportation expenses and moving expenses of employees who were affected by the transfers set forth in Section 7.

That during the negotiations for this collective bargaining agreement, the company notified the union. It notified the union that it proposed to transfer equipment to other locations and to third parties and that it was willing to negotiate with the union concerning the permanency of such transfers as well as the effect upon employees should such transfer become permanent.

That as a result of the negotiations, the union initially after such notification was given, initially took the position that all work which had been farmed out, all equipment which had been transferred out must be brought back to the plant at the Laflin Street address within 90 days of execution of the new contract.

That such union demand was denied and that the Section 6—Section 10 of Article 6 was the resulting agreed upon provision of the contract relating to this issue.

* * * * *

117 Secondly, that this witness would testify that during the negotiations for this collective bargaining agreement the parties specifically discussed the issues of subcontracting. That prior to the execution of this contract that there was no provision in the collective bargaining agreement concerning sub contracting and that as a result of the negotiations the parties finally agreed upon Section 3 of Article 1 of the current collective bargaining agreement.

So ends the offer of proof.

Mr. Lazar: And the General Counsel—

Trial Examiner: I don't think I need to hear from the General Counsel at this point. I am going to reject the offer of proof.

118 In the first place, the contract of cause is binding upon the parties. Now the question of its contruction and application is provided for in the grievance procedure. They go to arbitration. The only question before me is

whether the union is entitled to other—is entitled to information under these. Granted, they waived all of these other claims or did not waive them, that is not an issue before me. There has only been a question of information which would enable them to intelligently administer the contract.

I am a little disturbed in the fact that—not in this case but in so many other cases—where a collective bargaining agreement has been reached by the parties and thereafter they come running to the Board because they are disappointed in the agreement that they have signed.

I tend to think this breaks down the entire machinery of collective bargaining.

I am going to reject your offer of proof. In every case we can't go through all negotiations which led to a contract. I think it is partly the Board's own fault that they haven't discouraged this. I say, "You have made your contract," why don't you go where you belong with it. And I also under the Board's point being sustained by the Supreme Court that we have exclusive jurisdiction to cure unfair labor practices. You have to have a balance somewhere there between stabilization of contract and therefore the stabilization of the collective bargaining process and the curing or remedying of unfair labor practices.

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I reject that offer of proof. I have tried to confine this case much more closely than I have been able to. It not only breaks down the collective bargaining machinery, I don't see how it helps the peaceful settlement of dispute which the Act is supposed to encourage for the Board to intervene where a contract has been made.

That is all I have to say on this.

Q. (By Mr. Kovar.) Mr. Bellush, have any employees been laid off since April 23 as a result of any removal of equipment?

A. No.

Mr. Lazar: Objection Mr. Trial Examiner, we have already been through this and you have found this to be irrelevant.

Trial Examiner: Yes, we have in the absence of a claim that any employees were laid off. I have agreed.

Mr. Kovar: I make another offer of proof concerning what Mr. Bellush would testify to:

That he would testify that in fact that there had been no layoff since the execution of this contract, April 23, 1963 as a result of any removal of equipment.

Trial Examiner: The offer is rejected. I think that is inherent in the record that there has been no claim of the layoff, implicit.

Q. (By Mr. Kovar.) Mr. Bellush, have there been any employees reduced in classification since April 23, 1963 as a result of any removal of equipment?

A. No.

Q. Mr. Bellush, has the company refused to take any of the grievances here submitted to arbitration?

A. No.

Mr. Friedman: Objection.

Trial Examiner: Overruled.

Mr. Kovar: No further questions.

Cross-Examination.

Q. (By Mr. Lazar.) Has anybody been reclassified in their employment between the date of the execution of the contract and April 23, 1963 that is, and the removal of the contract—not because of the removal of the contract—removal of the machinery, but prior to the removal of the machinery?

A. Yes.

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121 Mr. Kovar: Excuse me, Mr. Trial Examiner, I think I should have made the offer of the 1959 contract, sir.

Trial Examiner: All right.

Mr. Kovar: I'd like to offer in evidence the document which has been identified as Respondent's Exhibit No. 2.

Mr. Lazar: I will, of course, object to its introduction on the same ground before. It is irrelevant, Mr. Examiner.

Trial Examiner: I will admit it.

(Whereupon, RESPONDENT'S EXHIBIT NO. 2 was received into evidence.)

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GENERAL COUNSEL'S EXHIBIT NO. 3.

* * * * *

Collective Bargaining Agreement.

This Agreement is entered into this 23rd day of April, 1963, between Acme Industrial Company, 200-222 North Laflin Street, Chicago, Illinois, or its successor (hereinafter called the "Company"), and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and its Amalgamated Local Union No. 310 (hereinafter called the "Union"), and is limited in scope to the location noted unless otherwise specifically provided herein.

Witnesseth:

* * * * *

Bargaining Unit.

The unit recognized by the Company and the Union for the purposes of this Contract includes all production and maintenance employees, and all other employees whose job classifications appear in Exhibits "A" and "B" of the Contract, but excluding draftsmen, engineers, full time watchmen, nurse, inventory control clerks, timekeepers, scheduling clerks, and other office clerical employees and all supervisory employees having authority to hire, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

Article I.

Union-Management Relations.

Section 1. The Company recognizes the Union as the sole and exclusive bargaining agency of the employees of the plant (identified in the preamble to this agreement) included in the bargaining unit during the life of this Agreement on all matters pertaining to wages, hours, and conditions of employment.

Section 2. Management's right to manage the operation and to direct the working force is subject to the terms and conditions set forth in this Agreement and any supplementary agreement executed by the parties.

Section 3. It is the Company's general policy not to subcontract work which is normally performed by employees in the bargaining unit where this will cause the layoff of employees or prevent the recall of employees who would normally perform this work for the Company. The Company will continue to purchase components and subassemblies and to have other outside work done, including the making of tools and dies, where it is not economic to perform this work in the plant, or where production schedules, equipment, employee skills or other factors make it impractical to perform the work in the plant. Violation of the above will be subject to the grievance procedure.

It is understood that this Section shall have no application to subcontracts in existence at the time of the execution of this Agreement.

Section 4. The parties, believing that a stable and responsible Union is necessary (1) to secure increased production and highest quality of workmanship, and (2) to promote and maintain harmonious relations between employer and employees, do now agree as follows:

(a) Employees covered by this Agreement at the time

it becomes effective and who are members of the Union at that time shall be required as a condition of continued employment to continue membership in the Union for the duration of this Agreement. Employees covered by this Agreement who are not members of the Union at the time this Agreement becomes effective shall be required as a condition of continued employment to become members of the Union within thirty-one (31) days following such effective date.

(b) The Union will accept into membership all employees covered by this Agreement who shall tender Initiation Fees (if not already a member) and the periodic dues uniformly required as a condition of acquiring or retaining membership in the Union.

* * * * *

Article III.

Shop Representation.

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Section 4. Committeemen and stewards shall be permitted such time off away from their jobs as is reasonably necessary to perform their duties as set forth in Article IV, it being understood that only the Shop Chairman and other committeemen, or their alternates in their absence, shall be permitted to visit departments within the area of their representation for the handling of grievances, as provided in Articles III and IV, after receiving a pass from their foreman. When committeemen leave their work station to attend meetings specified in Article IV, they shall also obtain such a pass. Committeemen and stewards shall request permission of their foreman and obtain the aforementioned pass before leaving their place of work to handle a grievance, which permission shall not be unreasonably delayed, it being understood that no such requests may be

made during the first fifteen (15) minutes of the shift or the first fifteen (15) minutes after the lunch period. It is further understood that the time spent in such activity shall not be unreasonable.

Section 5. Stewards or members of the Shop Committee will be paid their regular rate of pay for necessary time lost during working hours within the current workweek in attending Company-Union conferences and handling of grievances as outlined in the Grievance Procedure of this Agreement. Such time lost by stewards or members of the Shop Committee during the workweek shall be considered in computing overtime pay.

Section 6. Whenever the Company requests a Union representative to leave his job and confer on matters other than grievances, such representative shall be paid his regular hourly rate for the time so spent. In the case of the night shift representative, an equal time from his shift will be deducted in lieu of such time spent in Company-Union meetings, negotiation, or arbitration. Where it is practical to do so, in the opinion of the Management, the night shift representative will be allowed to start work on the day shift to finish out the balance of his normal work shift time after a Shop Committee meeting.

Article IV.

Grievance and Complaint Procedure and Arbitration.

Section 1. A grievance is a difference of opinion with respect to the meaning and application of the terms of this Agreement.

Section 2. Grievances or complaints shall be adjusted as follows:

Step 1: Any attempt to adjust a grievance or complaint will first be made between the employee, his steward, and

his foreman. If the foreman should call or bring in any other Company representative into this discussion, the steward shall have the right to call or bring in the area committeeman. (The steward may phone the area committeeman or go to see him to discuss the grievance under such circumstances.)

Step 2: If the matter is not satisfactorily settled, the steward or the area committeeman shall reduce the grievance or complaint to writing within five (5) working days, specifying the nature of the grievance or complaint, shall identify the employee(s) involved, and in the case of a grievance, the contract provision(s) involved. The foreman shall within three (3) working days thereafter set forth his written answer and the matter shall be discussed at the next semi-monthly meeting between the shop committee and representatives of the Industrial Relations Department. Such meetings will be held at 2:00 P.M. on the day in question, or such other time as is mutually agreed to, but will be held only if there are grievances then pending; however, special meetings may be called by either party if a matter of immediate emergency is involved and such meeting must be held within three (3) working days of such call.

Step 3: If the matter is not satisfactorily settled, the Union may appeal within five (5) working days, and a meeting of the shop committee and representatives of the Industrial Relations Department shall be scheduled at which the Union's International Representative(s) or other representatives shall be present. The Company shall give the Union a written final answer within five (5) working days of such meeting.

Section 3. If a grievance is not satisfactorily adjusted under the above procedure, the Union may appeal the grievance to arbitration within twenty (20) days of receipt of the Third Step answer. The parties shall jointly request the Federal Mediation and Conciliation Service to submit a panel of five (5) arbitrators from which the Union shall

strike two (2) names, then the Company shall strike two (2) names, and the remaining arbitrator shall be named to hear the grievance.

(a) The arbitrator shall have no authority to change, alter, detract from or add to the provisions of this Agreement or agreements supplemental to this Agreement, his authority being limited to the interpretation of the terms of this Agreement.

(b) The award of the arbitrator shall be final and binding upon the parties.

(c) The Company and the Union shall each pay one-half (½) of the expenses of the arbitrator.

(d) The Company agrees to compensate such Union representatives and employee witnesses as may be required for the presentation of the case at their regular rates of pay for the time lost during working hours in connection with the arbitration proceedings. The Company agrees, further, that the time spent within the current workweek by such night shift representatives and employees as may be required at arbitration proceedings shall be considered as time worked and shall offset the need of work an equal number of hours, depending upon the prevailing hours, each day of the proceedings at which such representatives and/or employees must be present.

* * * * *

Section 4. Grievances relating to layoffs and rehirings in connection with the increase or decrease of the working force must be filed within five (5) working days from the effective date of the layoffs or rehirings. Alleged grievances on transfers or promotions (to higher rated jobs) must be filed within three (3) working days of the effective date of such transfers or promotions. Grievances involving suspension or discharge may be taken up directly at the Second Step of the grievance procedure and must be filed within five (5) working days after such action occurs.

* * * * *

Article VI.

Seniority.

Section 1. Seniority shall be defined as an employee's length of continued service with the Company at its Chicago plant identified in the preamble to this Agreement from his last date of hire.

* * * * *

Section 5. An employee shall forfeit his seniority if:

(a) He quits,

(b) He is discharged for just cause,

(c) He gives a false statement in obtaining a leave of absence,

(d) He is absent from work for five (5) consecutive working days without notifying the Company. Such absence must be for just cause. (The Company and Union agree that an absentee employee should notify the Company on the first day of his absence as to when he or she will report back to work, except where the failure of such notification is due to causes beyond the employee's control.)

(e) He fails to report for work within five (5) days after receiving written notice of recall to his original classification after a layoff, given by the Company by registered mail or telegram and addressed to the employee at his last known address appearing on the records of the Company, or

(f) He is on continuous layoff for a period equivalent to actual seniority for employees with two (2) years or less of seniority; he is on continuous layoff for a period of two (2) years for employees with more than two (2) years but less then four (4) years of seniority; he is on continuous layoff for a period equivalent to one-half (½) of actual seniority for employees with four (4) or more years of seniority.

* * * * *

Section 10. In the event the equipment of the plant or of any department, entirely or partially, is hereafter moved to another location of the Company, employees working in the plant or in such department who are subject to reduction in classification or layoff as a result thereof may transfer to the new location with full rights and seniority, unless there is then in existence at the new location a collective bargaining agreement covering production and maintenance employees at such location.

* * * * *

Article VII.

Layoffs and Recalls.

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Section 3. A layoff in excess of one (1) week shall constitute an indefinite layoff. When it becomes necessary to reduce the working force and/or curtail or eliminate any job classification on an indefinite basis, the following procedure shall govern:

(a) The youngest employee in the particular job classification involved shall be removed from the job classification. The working assignments of the employees remaining in the job classification shall be rearranged for the efficient operation of the jobs that are still operating.

(b) If the employee is removed from his classification under Paragraph (a), his qualifications will be reviewed, based upon his past experience, both at Acme Industrial and prior to his being hired at Acme Industrial, as stated on his application for employment. However, in the event that an employee since the date of hire at Acme Industrial has acquired additional skills, either through experience or schooling, this also will be reviewed and given consideration. His seniority will then be checked in the classification most nearly comparable to the classification from which he

was laid off, and he will displace a younger employee in that job classification, provided he has more seniority than that employee and is capable of doing the job.

(c) In the event of a reduction in force, an employee who is transferred from one classification to another classification shall, seniority permitting, be placed on the shift of his choice at the time of transfer.

(d) However, in the event the transfer under Paragraphs (b) and (c) above does not entitle the employee to the shift of his choice, he may exercise his rights to refuse this assignment and bump into a most nearly comparable classification, seniority permitting, in order to be placed on the shift of his choice.

(e) It is understood by both parties that a refusal to a particular job under the terms of Paragraph (d) above, does not deny the employee the right to recall into the same classification, seniority permitting.

(f) Employees who are subject to being down-graded as a result of the application of this Section may exercise the option of taking a voluntary layoff, provided that they shall only be recalled in line with their seniority to their classification and shift.

(g) In determining the employee's capability of doing the job, an employee shall be considered capable if he or she can perform the job in not more than twenty-four (24) working hours. However, if at the expiration of the twenty-four (24) hours, the employee has shown sufficient progress, the time period may be extended by negotiations between supervision and the committeeman. Where an employee has failed to meet the qualifications of the job classification to which he was transferred as provided above within the twenty-four (24) hour working period, the Company shall then select for him the next most comparable job classification which he can then perform; and if he cannot perform such job, then the Company shall select for him the next

most comparable job classification which he can then perform.

(h) After steps (a), (b), (c), (d) and (g) have been applied without placement, the employees will be laid off.

Section 4. Whenever it becomes necessary to increase the working force in any classification, the following procedure shall be followed:

(a) The Company will select the most senior employee from the following group: (i) all employees who had previously been reduced from the affected classification pursuant to Section 3 hereof, (ii) all employees then laid off from the plant who had previously been classified in the affected classification. Should the opening(s) not be filled from this group, then

(b) The Company will select an employee pursuant to the standards set forth in Article X.

(c) An employee on layoff who is offered an opening on an intermediate job classification and refuses such opening, shall forfeit his right to be recalled into any other intermediate classification. An intermediate job is deemed to be one which carries a lower rate of pay than the employee's home classification.

(d) Employees on layoff from the plant refusing a recall to their home job classification, regardless of shift, shall be terminated.

(e) Employees working in the plant, who refuse a recall to their home classification, regardless of shift, shall thereafter have no further recall right to such classification.

* * * * *

Article X.

Job Posting.

Section 1. (a) When new jobs are created or permanent vacancies occur, subject to the prior application of Article VII, Sections 4(a) and (b), such jobs shall be posted on a plantwide basis for a period of not less than two (2) working days.

(b) Should the Company wish to fill a position, vacancy in which has been caused by vacation or leave of absence, such opening shall be filled pursuant to the procedure set forth in Exhibit "D".

(c) The selection of employees for job openings shall be made on the basis of seniority, provided that ability is reasonably equal.

(d) Employees' bids for higher rated jobs will be unlimited, but bids for lower or same rated jobs will not be granted more than once a year.

(e) The transferring of an employee to a job opening shall be made not later than one week after he has been selected. If, for any reason, the transfer cannot be made within this fixed period, the Company and the Union will mutually agree to a predetermined period of time. The Company shall be permitted to designate an employee to fill the vacant job irrespective of seniority until the posting procedure has been completed.

(f) When a permanent job is open and an employee with questionable ability has bid and is selected by the Company, the Company, by mutual agreement with the Union, may train such an employee for a period not to exceed sixty (60) days to determine whether he has the qualifications for the job.

Section 2. The Company agrees to grant all of its employees an equal opportunity to bid on all job openings, and

in no way shall discourage such employees from bidding on job openings or discriminate against the employee for such bidding. Any claims of personal prejudice, favoritism, or discrimination in connection with the selection of employees for job openings may be taken up as grievances.

Section 3. Employees classified and paid in the "C" grade of any classification, shall automatically be upgraded to "B" grade within thirty (30) days of entry into the "C" grade.

Section 4. Employees who bid for such job openings but fail to qualify, shall return to their former job, seniority permitting. Should seniority not permit such retransfer, then the employee's seniority rights shall be as set forth in Article VII, Section 3. Such employee may not bid again for such position for a period of one (1) year.

Section 5. (a) When a job is posted while employees are on layoff, the Company and Union shall review the qualifications of those laid off to determine which, if any, shall be notified of the opening. An employee so notified shall contact the Company within forty-eight (48) hours.

(b) The qualifications of employees who are on emergency or sick leave, for whom such opening is a promotional (higher rated) opportunity, shall also be jointly reviewed to determine which, if any, shall be notified of the opening. Such employee must be available for notification and acceptance within a forty-eight (48) hour period, and must be available for employment within one (1) calendar week of such notification or such additional period as the parties agree upon.

* * * * *

Article XVII.

General.

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Section 3. No member of the supervisory or engineering force shall perform work normally performed only by employees in the unit which would cause a bargaining unit employee to be sent home, or not to be recalled. It is understood that foremen or engineering personnel may perform work for purposes of instruction or training of employees, testing of new or faulty machines or methods, or assisting employees in making set-ups, or in emergencies where regular employees are not immediately available. Grievances arising hereunder shall immediately be taken up at the Third Step.

* * * * *

Article XVIII.

No Strike—No Lockout.

Section 1. The Union and the Company have attempted to provide in this Agreement a complete and peaceful procedure for the handling and final disposition of all disputes and grievances which may arise during the life of this Agreement. Therefore, it is mutually agreed that there shall be no lockouts, strikes, stoppages of work, curtailment and/or interference with production unless otherwise provided in this Agreement.

* * * * *

Article XIX.

Duration of Agreement.

Section 1. This Agreement supersedes and cancels all previous agreements between the parties and constitutes the entire agreement between the parties, concluding bargaining for its term.

Section 2. This Agreement, except as otherwise herein provided, shall become effective upon the date of execution and shall continue in full force and effect for a period of three (3) years and from year to year thereafter, unless notice in writing to terminate, amend or modify is given at least sixty (60) days prior to the expiration date. Should neither party give such sixty (60) day notice, this Agreement shall remain in full force and effect until notice is given and for sixty (60) days thereafter.

GENERAL COUNSEL'S EXHIBIT NO. 4-A.

Grievance or Complaint Form.

Step 1.

Grievance No. 54. **Date 1/13/64**

Nature of Grievance or Complaint: The Union contends that the Company is in violation of the articles listed below:

The Company moved equipment, mainly a Kleerman machine from the plant. This machine was used in the Tool Room, Dept. 51 as a Jig Bore. The work that was performed on this and other machines by bargaining-unit employees in Dept. 51 is obviously being done elsewhere. This is depriving the Tool Room employees of their rightful job rights under the existing agreement.

No notification was given to the Union at the time that this took place. Steward and Committeeman Rudy Rich discussed this issue with Foreman P. Steelhammer, after which this foreman merely stated that the Company was not in violation of the contract. This was his answer after he had discussed the matter with the Industrial Relation's Department.

Contract provision(s) involved (if grievance):

Article VI, Section 10 and
Article I, Sections 1, 2 and 3.

Employee(s) Aggrieved:

Tool Room Employees and Local #310 UAW-AFL-CIO.

Adjustment Requested:

That the Company live up to their agreement and give employees their full job rights, also from the date of the filing of this grievance employees deprived of employment by the action of the Company be compensated fully.

Union signature Rudolph Rich.

Foreman's answer:

There was no violation of the contract. Grievance denied.

Date 1-13-64

Foreman's signature
Paul A. Steelhammer.

Settled ☐ **Appealed to Industrial Relations ☒**

Date 1-14-64

General Counsel's Exhibit 4-A (Back Page).

Step 2 Answer.

Grievance No. 54

Industrial Relations Disposition:

The machine involved was moved 10-18-63. This complaint was filed almost 3 months later. No employee was working on the machine at the time of its removal. No employees were reduced in classification or laid off as a result of the machine's removal. There was no contract violation.

Date January 21, 1964

Industrial Relations Manager
T. J. Bellush.

Settled ☐ **Appealed to Step 3 ☒**

GENERAL COUNSEL'S EXHIBIT NO. 4-B.

Grievance or Complaint Form.

Step 1.

Grivance No. 57 Date 1/31/64

Nature of Grievance or Complaint: The Company violated the below mentioned articles and sections of our agreement when they moved equipment, namely Jeweler's Lathes from the plant. This has been done while there are bargaining unit employees reduced to lay-off status. Also, the Company has farmed out work that would normally be done on the Jeweler's Lathe. The combination of both violations have left the employees normally working in the Jeweler's Lathe classification jobless.

When this was first discussed with C. Delonghi, he stated that the lathes were not moved. However, several employees have confirmed the fact that they have been moved from the plant.

Contract provision(s) involved (if grievance):

Article I, Section 3, and
Article VI, Section 10.

Employee(s) Aggrieved:

Local #310 UAW-AFL-CIO.

Adjustment Requested:

That the Company discontinue the violations and that at least one employee who would be regularly assigned to the above mentioned job be compensated for lost wages from the date of the filing of this grievance.

Union signature

Victor F. Scholowski.

GENERAL COUNSEL'S EXHIBIT NO. 4-C.

Grievance or Complaint Form.

Step 1.

Grievance No. 58 Date 1/31/64

Nature of Grievance or Complaint: The Company is in violation of the articles mentioned. They moved equipment from the plant, namely a multiple drill press which adversely affects bargaining unit employees who are reduced to lay-off status. The work that has been done in the past on this machine is now being farmed out.

When this was discussed with foreman E. Kuczek he stated that this machine was sold but no proof to confirm this was offered.

Contract provision(s) involved (if grievance):
Article I, Sections 1, 2 and 3.
Article VI, Section 10

Employee(s) Aggrieved:
Local #310.

Adjustment Requested:
That the Company fulfill their obligations under the as per Article VI, Section 10 and discontinue the farming out of work that can and should be done in the plant at Acme.

Union signature
Victor F. Scholowski.

GENERAL COUNSEL'S EXHIBIT NO. 4-D.

Grievance or Complaint Form.

Step 1.

Grievance No. 60 Date 2/10/64

Nature of Grievance or Complaint: On January 27, 1964, the Union Steward, Rudolph Rich discussed the removal of Thread Grinding Machines from the shop with Foreman Eddie T. of the grinding department of the second floor.

Upon receiving no explanation from the Foreman, Eddie T. as to the Company's reason for their removal, the Union Steward requested permission twice to file the first written stage of the grievance procedure and was delayed both times.

This grievance was written in the home of Steward Rudolph Rich, since the Industrial Relations Manager, Tom Bellush issued a new oral directive directly to the Vice-President, Rudolph Rich and to the President, William Antalek of Local #310. Any and all grievances originating from the Union are not to be written, according to this directive, on the premises of Acme Industrial Co. during working hours.

A direct violation of the contract is hereby being charged against the company in both instances.

Contract provision(s) involved (if grievance):

Article I—Sections 1, 2 and 3.
Article III—Sections 4, 5 and 6.
Article IV—Sections 1, 2 and 3.
Article VI—Section 10.

Employee(s) Aggrieved:

1. Local #310 UAW-AFL-CIO.
2. Displaced employees.
3. Union Officer, Rudolph Rich.

Adjustment Requested:

The employees who are being displaced by the removal of these machines be compensated for lost wages since the removal took place, also that the Company comply with the Grievance Procedure pertaining to the writing of grievances during the regular working hours and that the steward, in this instance, Rudolph Rich be compensated for the time spent in the writing of this grievance.

Union signature
Rudolph Rich.

GENERAL COUNSEL'S EXHIBIT NO. 4-E.

Grievance or Complaint Form.

Step No. 1.

Grievance No. 61 Date 2/10/64

Nature of Grievance or Complaint: This grievance is being written in regards to the violation of the Company's action regarding the removal of the two (2) O. D. Grinding Machines on Thursday January 30, 1964 from the premises.

In our written Contract with the Company, we feel that the Company is obligated to meet with the Shop Committee of Local #310 and negotiate any and all machinery being removed, transferred, sold, loaned, rented, etc.

According to a new directive by the Industrial Relations Manager, Tom Bellush, this grievance and all future griev-

ances as of February 3, 1964 are to be written outside of the shop premises, at no expense to the Company.

This is in direct violation of past practice since the inception of Local #310 at Acme Industrial Company.

Contract provision(s) involved (if grievance):

Article I, Section 1, 2 and 3.
Article III, Section 4, 5 and 6.
Article IV, Section 1, 2 and 3.
Article VI, Section 10.

Employee(s) Aggrieved:

1. Local #310 UAW-AFL-CIO.
2. Displaced employees.
3. Union Officer, Rudolph Rich.

Adjustment Requested:

1. The Company comply with the above mentioned Articles and sections of our agreement in their entirety.
2. Employees displaced by the removal of machines be compensated for lost wages.
3. The Union Officer, Rudolph Rich, be compensated for the time involved in writing of this grievance on his own time.

Union signature

Rudolph Rich.

GENERAL COUNSEL'S EXHIBIT NO. 4-F.

Grievance or Complaint Form.

Step 1.

Grievance No. 62 Date 2/10/64

Nature of Grievance or Complaint: On Monday, January 27, 1964 the Union Steward, Rudolph Rich discussed the removal of the three Thread Grinding Machines from the shop with Foreman Eddie T. of the grinding Department on the second floor.

Upon receiving no explanation from the foreman as to the Company's reason for their removal, the Union Steward requested permission to begin processing the grievance according to Article IV, Section 2, Step 2 as outlined in the contract.

The foreman unreasonably delayed this request until the following week. This action was an attempt by the foreman to nullify the right of the steward to file this grievance within the five day period as outlined in the contract. Permission was requested twice during this five day period. Grievance time was requested of the Foreman by the Union Steward on Mon. 2/3/64, to file a grievance regarding the unreasonable delay in granting permission to file a grievance on the removal of the Thread Grinding Machines. Personnel Director, Tom Bellush made it unmistakably clear in the presence of foreman Eddie T. and Steward R. Rich that all future grievances were to be written outside of the shop and at no expense to the Company.

Contract provision(s) involved (if grievance):

Article I, Sections 1 and 2.

Article III, Sections 4, 5 and 6, also Article IV, Sections 1, 2 and 3.

Employee(s) Aggrieved:

1. Local #310 UAW-AFL-CIO.
2. Steward, Rudolph Rich.

Adjustment Requested:

1. That all grievances be permitted to be written as per contract. (Article III, Sections 4, 5 and 6, also Article IV, Sections 1, 2 and 3.
2. That all future grievances be allowed to be processed without unjust delay.
3. That Steward Rudolph Rich be re-imbursed for time involved in the writing of this grievance.
4. That the Company negotiate immediately with the Union as to removal of these machines.

Union Signature

Rudolph Rich.

GENERAL COUNSEL'S EXHIBIT NO. 4-G.

Grievance or Complaint Form.

Step 2.

Grievance No. 63 Date 3/2/64

Nature of Grievance or Complaint: On Wednesday Feb. 19, 1964, one Hauser Jig Borer Machine from the Tool Room was moved out of the plant.

In our written Contract with the Company, we feel the Company is obligated to meet with the Shop Committee of Local #310 and negotiate any and all machinery being removed from the plant when it displaces or denies employment to Bargaining Unit Employees

According to a new directive by the Industrial Relations Manager, Thomas Bellush, this grievance, and all future

grievances as of Feb. 3, 1964, are to be written outside of the shop. This is in direct violation of past practice since the inception of Local #310 at Acme Industrial Company and a direct violation of our Contract.

Contract provision(s) involved (if grievance):

Article I, Section 1, 2 and 3.
Article III, Section 4, 5 and 6.
Article IV, Section 1, 2 and 3.
Article VI, Section 10.

Employee(s) Aggrieved:

1. Local #310, UAW.
2. Rudolph Rich, Committeeman.
3. Tool Room employees, Frank Orpzodek, Wilburt Schmuldee, John Matusko, Ted Wendell, John Alexander and Pete Sasso.

Adjustment Requested:

1. The Company comply with the above articles and sections of our agreement in their entirety.
2. The Union Officer, Rudolph Rich, be compensated for time involved in writing this grievance on his own time.
3. Employee displaced or denied employment by the removal of this Hauser Jig Borer Machine be compensated for lost wages.

Union Signature

Rudolph Rich.

GENERAL COUNSEL'S EXHIBIT NO. 4-H.

Grievance or Complaint Form.

Step 2.

Grievance No. 64 **Date 3/3/64**

Nature of Grievance or Complaint: This grievance is being written in regards to the violation of the Co's. action regarding the removal of one Chucker from the plant.

In our written Contract with the Co., we feel the Company is obligated to meet with the Shop Committee of Local #310 and negotiate any and all machinery being removed from the plant when it displaces or denies employment to Union employees.

The Company's action adversely affects Bargaining Unit Employees' job rights.

Also, the Company denied me, Steward, Victor Sokolowski my rights under our contract to write this grievance during working hours.

Contract provision(s) involved (if grievance):

Article I, Section 1, 2 and 3.
Article III, Section 4, 5 and 6.
Article IV, Section 1, 2 and 3.
Article VI, Section 10.

Employee(s) Aggrieved:

1. **Displaced employees.**
2. **Local #310, UAW.**
3. **Victor Sokolowski, Union Steward.**

Adjustment Requested:

1. **Employees displaced or denied employment by the removal of this machine be compensated for lost wages.**

2. The Company comply with the above Articles and Sections of our agreement in their entirety.
3. The Union Officer, Victor Sokolowski, be compensated for the time involved in writing this grievance on his own time.

Union Signature

Victor F. Sokolowski.

GENERAL COUNSEL'S EXHIBIT NO. 4-I.

Grievance or Complaint Form.

Step 2.

Grievance No. 65 Date 3/3/64

Nature of Grievance or Complaint: The Union Steward, Victor Sokolowski discussed the Company's removal from the Shop of the Straddle Mill Machine with Foreman Eddie Kuczek, of the first floor, Plant #1.

Upon not receiving a satisfactory explanation from the Foreman as to the Co's. reason for the removal, the Union Steward requested permission to begin processing a grievance. This right was denied him.

Foreman, E. Kuczek stated that this grievance and all future grievances were to be written outside of the Shop premises, not during working hours. These were his orders from the Industrial Relations Department.

Contract provision(s) involved (if grievance):

Article I, Section 1 and 2.
Article III, Section 4, 5 and 6.
Article IV, Section 1, 2 and 3.

Employee(s) Aggrieved:

1. Local #310, UAW.
2. Victor Sokolowski, Union Steward.

Adjustment Requested:

1. Employees displaced or denied employment by the Co's. action be compensated for lost wages.
2. That all grievances be permitted to be written as per Contract.
3. That Steward, Victor Sokolowski, be reimbursed for writing this grievance on his own time.
4. That the Company negotiate immediately with the Union on the removal of the Straddle Machine.

Union Signature

Victor F. Sokolowski.

GENERAL COUNSEL'S EXHIBIT 4-J.

Grievance or Complaint Form.

Step 2.

Grievance No. 66 Date 3/3/64

Nature of Grievance or Complaint: This grievance is being written in regards to the violation of the Company's action regarding the removal of four Single Spindle Drill Press Machines.

In our written Contract with the Company, we feel the Company is obligated to meet with the Shop Committee of Local #310 and negotiate any and all machinery being removed from the plant when it displaces or denies employment to Union Employees.

According to new orders by the Industrial Relations Manager, Tom Bellush, this grievance and all future grievances as of February 3, 1964, are to be written outside of the Shop premises. This is in direct violation of past practice since the inception of Local #310 at Acme Industrial Co. and a direct violation of our Contract.

Contract provision(s) involved (if grievance):

Article I, Section 1, 2 and 3.
Article III, Section 4, 5 and 6.
Article IV, Section 1, 2 and 3.
Article VI, Section 10.

Employee(s) Aggrieved:

1. Edward Korus.
2. Local #310, UAW.
3. Victor Sokolowski, Union Officer.

Adjustment Requested:

1. Employees displaced or denied employment by the removal of machines be compensated for lost wages.
2. The Company comply with the above Articles and Sections of our agreement in their entirety.
3. The Union Officer, Victor Sokolowski, be compensated for the time involved in writing this grievance on his own time.

Union Signature

Victor F. Sokolowski.

GENERAL COUNSEL'S EXHIBIT NO. 4-K.

Grievance or Complaint Form.

Step 2.

Grievance No. 67 Date 3/3/64

Nature of Grievance or Complaint: This grievance is being written in regards to the violation of the Company's action regarding the removal of four Traubs Automatic Screw Machines from the plant at Acme Industrial Company.

In our written Contract with the Company, we feel the Company is obligated to meet with the Shop Committee of

Local #310 and negotiate any and all machinery being removed from the Plant when it displaces or denies employment to Union Employees.

According to a new directive by the Industrial Relations Manager, Tom Bellush, this grievance, and all future grievances as of February 3, 1964, are to be written outside of the Shop premises. This is in direct violation of past practice since the inception of Local #310 at Acme Industrial Co. and a violation of our contract.

Contract provision(s) involved (if grievance):

Article I, Section 1, 2 and 3.
Article III, Section 4, 5 and 6.
Article IV, Section 1, 2 and 3.
Article VI, Section 10.

Employee(s) Aggrieved:

1. Local #310, UAW.
2. Roger Hale, Edward Clover and William Flowers.
3. Victor Sokolowski, Union Officer.

Adjustment Requested:

1. The Company comply with the above Articles and Sections of our Agreement in their entirety.
2. Employees displaced or denied employment by the removal of machines be compensated for lost wages.
3. The Union Officer, Victor Sokolowski, be compensated for the time involved in writing this grievance on his own time.

Union Signature

Victor F. Sokolowski.

GENERAL COUNSEL'S EXHIBIT NO. 5.

April 3, 1964

Acme Industrial Company
222 North Laflin
Chicago, Illinois
Attention: Mr. T. J. Bellush

Dear Mr. Bellush:

The Union requests that the Company furnish the following information at the earliest possible date:

1. The approximate dates when each piece of equipment was moved out of the plant.
2. The place to which each piece of equipment was moved and whether such place is a facility which is operated or controlled by the Company.
3. The number of machines or equipment that was moved out of the plant.
4. What was the reason or purpose of moving the equipment out of the plant.
5. Is this equipment used for production elsewhere.

The information we are asking for is essential to the Union for the servicing and administration of the current contract.

Sincerely,

William Antalek,
President, Local 310 UAW.

WA:bt

GENERAL COUNSEL'S EXHIBIT NO. 6.

(Letterhead of Acme Industrial Company, 200-222 North Laflin Street, Chicago 7, Illinois.)

April 16, 1964

Mr. William Antalek, Pres.
Local Union 310, UAW-AFL-CIO
222 N. Laflin Street
Chicago, Illinois 60607

Dear Mr. Antalek:

We were unaware that our relationship with your union had reached the stage when correspondence such as your letter of April 3, 1964 has become necessary. However, while we are of the opinion that it is not the scope and complexities of our relationship that dictates your use of this medium but, rather, that you are now attempting to build an unfair labor practice charge case, we shall, nevertheless, hereby respond.

We presume that your questions relate to Article VI, Section 10 of our labor agreement, although you do not specify the relevance and/or utility of the questions. We note that this section establishes a right of transfer, with certain limitations, to employees ". . . who are subject to reduction in classification or layoff as a result of . . ." the movement of any equipment to another location of the Company. We also note that under Section 4 of Article IV of our labor agreement, grievances relating to layoffs must be filed within five (5) working days thereafter, and grievances relating to transfers must be filed within three (3) working days thereof.

We are aware of no layoffs nor of any reductions in any classification within five (5) working days prior to your

letter, and we, therefore, conclude that there is no proper basis upon which your request for information may lie. You have available all the information you need to determine whether or not any employees' rights are being violated. Furthermore, the broad scope of your questions is indicative of a fishing and harassment expedition rather than a true desire for necessary information.

Please be assured that we shall continue to cooperate with your union in providing whatever proper information you request for your aid in servicing and administering our labor agreement.

Very truly yours,

Acme Industrial Company,
T. J. Bellush,
Industrial Relations Mgr.

RESPONDENT'S EXHIBIT NO. 2.

Collective Bargaining Agreement

This Agreement entered into this 5th day of August, 1959, between

Acme Industrial Company, 200-222 North Laflin Street, Chicago, Illinois, or its successor (hereinafter called the "Company"),

and the

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, and its Amalgamated Local Union No. 310 (hereinafter called the "Union");

Witnesseth:

• • • • •

Article VI.

Seniority.

• • • • •

Section 7. In the event the plant or any department, entirely or partially, is moved to another location, employees working in the plant or in such department may transfer to the new location with full rights and seniority.

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[fol. 128]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1965—SEPTEMBER SESSION, 1965

No. 15045

ACME INDUSTRIAL CO., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review and on Cross-Petition for Enforcement of an Order of the National Labor Relations Board.

October 6, 1965

Before DUFFY, CASTLE, and MAJOR, *Circuit Judges.*

CASTLE, *Circuit Judge.* This case is before the Court upon the petition of Acme Industrial Company to review and set aside, and upon the cross-petition of the National Labor Relations Board to enforce, an order of the Board issued against the Company. The Board's decision and order are reported at 150 NLRB No. 144.

The Board found that the Company violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, by failing to comply with the Union's [1] request for information regarding the removal of machinery from the Company's Chicago, Laflin Street, plant. The Board's order requires the Company to cease and desist from re-

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[1] Amalgamated Local Union No. 810, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO.

[fol. 129] fusing to bargain with the Union by refusing to furnish it with information concerning the removal of equipment and machinery from the plant; or from in any like or related manner infringing on its employees' Section 7 rights. Affirmatively, the Company is required, upon request, to furnish the Union information concerning the removal of equipment and machinery from its plant, and to post designated notices.

The Company and the Union were parties to a collective bargaining agreement which expired on June 30, 1962. In October 1962, the Company employees represented by the Union went out on a strike which terminated with execution of a new agreement in April 1963. Although the Company operates several plants, the new agreement applied solely to its Laflin Street plant in Chicago, Illinois. At the time of the strike, about 190 employees comprised the plant bargaining unit. Immediately after the Company resumed operations following the strike, a number of employees were laid off. Between April 1963 and the date of the unfair labor practice hearing in late August 1964, the number of employees on layoff status ranged between 30 and more than 75. During this period, the status of between 7 and 9 employees was changed from layoff to termination under provisions of the agreement that continuous layoff for given periods effected a loss of seniority.

The 1963 collective bargaining agreement included a no-strike clause, a grievance and arbitration clause embracing "a difference of opinion with respect to the meaning and application of the terms of this agreement", and subcontracting and work transfer clauses containing the following provisions:

Article 1.

Section 3. It is the Company's general policy not to subcontract work which is normally performed by employees in the bargaining unit where this will cause the layoff of employees or prevent the recall of employees who would normally perform this work for the Company . . .

Article VI

Section 10. In the event the equipment of the plant or of any department, entirely or partially, is [fol. 130] hereafter moved to another location of the Company, employees working in the plant or in such department who are subject to reduction in classification or layoff as a result thereof may transfer to the new location with full rights and seniority, unless there is then in existence at the new location a collective bargaining agreement covering production and maintenance employees at such location.

On or about January 8, 1964, the Union, upon discovering that machinery was being removed from the Laflin Street plant, began to seek information concerning this through inquiry by its stewards. The steward in each of the several instances invoked asked why the machinery was being removed and where it was being moved. Company representatives answered that no violation of the contract was involved and refused to give the information. The Union submitted 11 grievances concerning removal of machinery and the subcontracting of work.

On April 3, 1964, the president of the Union wrote a letter to the Company requesting information concerning the approximate date when each piece of equipment was moved out of the plant; the place to which the equipment was moved and whether such place is a facility which is operated or controlled by the Company; the number of machines or equipment moved out of the plant; the reason or purpose for moving the equipment; and whether the equipment is used for production elsewhere. The Company refused to furnish the information requested.

All of the 11 grievances were still pending at the time of the August 1964 hearing on the unfair labor practice charge. The Board found that the information requested was "necessary in order to enable the Union to evaluate intelligently the grievances filed and to determine whether such grievances were meritorious, and whether to press for arbitration". The Board reasoned that the denial of the information deprives the Union of an opportunity to know whether jobs and machinery had been moved out

of the plant under circumstances entitling employees, especially those in layoff status, to follow the jobs or entitling the Union to grieve over improper subcontracting. The Board concluded that the Company was under a statu- [fol. 131] tory duty to furnish the information for the reason that by virtue of the provisions of Section 8(a) (5) and (1) and 8(d) of the Act an employer is under a statutory duty to furnish his employees' bargaining representative information which is relevant to a grievance or to the administration or policing of the contract.

But, apart from provisions such as the subcontracting and work transfer clauses of the agreement here involved it is not apparent that the removal of machinery from an employers plant would have relevance to a possible grievance or to contract administration or policing. The nature of the subject is such that it neither necessarily nor presumptively relates to wages, hours, or other terms or conditions of employment. Moreover, the agreement provided that differences with respect to the meaning or application of the provisions concerning the contracting out of work and work transfers are subject to final and binding compulsory arbitration. And the grievance procedures prerequisite to arbitration had been invoked and were pending. The factors bearing on a determination of the relevancy of the information requested are interrelated with a construction and application of the contract provisions. The latter is a matter exclusively reserved for the arbitrator. Under the circumstances here presented Board intervention to make the determination of relevancy in the light of its independent interpretation of the meaning and application of the contract provisions contravenes the policy expressed in *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, concerning the priority which should be accorded the grievance and arbitration procedures and machinery provided for in the contract. It was there pointed out (363 U.S. 581) that the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government and constitutes a part of the continuous collective bargaining process.

The arbitrator may require that he be furnished with information relevant to the resolution of the difference

submitted. Under the rationale of *United Steelworkers, supra*, recourse to the Board under such circumsances as are here presented appears to constitute a refusal to participate in the continued collective bargaining process afforded by the grievance and arbitration procedures pre-
[fol. 132] scribed. In any event, enforcement of the Board's order in the posture of this case would in our judgment contravene the national policy embodied in Section 203(d) of the Labor-Management Relations Act (29 U.S.C.A. § 173) that "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement". And, "[t]hat policy can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play". *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564, 566. Courts "have no business . . . determining whether there is particular language in the written instrument which will support the claim" (*ibid.*, 568). The declared statutory policy, and the judicial admonitions addressed to the courts, are equally applicable to the Board. Where the determination of the relevancy of information necessarily involves factors interrelated with or dependent upon construction of the substantive provisions of the labor agreement, and those provisions are the bases of pending grievances already submitted under the grievance and arbitration procedures of the agreement, Board intervention in the guise of determining and enforcing the peripheral matter of the duty to furnish information requested contributes nothing to any objective of the Act and in our opinion is improper. The order clashes with the policy of effectual achievement of contractual arbitration.

The Board's order is set aside and its enforcement is denied.

ORDER SET ASIDE AND
ENFORCEMENT DENIED

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[fol. 133]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 15045

Before:

HON. F. RYAN DUFFY, Circuit Judge
HON. LATHAM CASTLE, Circuit Judge
HON. J EARL MAJOR, Circuit Judge

ACME INDUSTRIAL CO., PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition for review of an order of the National Labor Relations Board.

JUDGMENT—October 6, 1965

This cause came on to be heard on the petition for review of an order of the National Labor Relations Board and the answer and request for enforcement of said order, and the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is hereby ordered by this Court that the order entered in this cause by the National Labor Relations Board on February 1, 1965, be, and the same is hereby set aside, and enforcement of said order is denied, in accordance with the opinion of this Court filed this day.

[fol. 134]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 135]

SUPREME COURT OF THE UNITED STATES

No. 876, October Term, 1965

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ACME INDUSTRIAL CO.

ORDER ALLOWING CERTIORARI—February 21, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 212197 701